WRITTEN TESTIMONY

OF

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FOR A HEARING ON

"ELECTRONIC EMPLOYMENT VERIFICATION SYSTEMS: NEEDED SAFEGUARDS TO PROTECT PRIVACY AND PREVENT MISUSE"

BEFORE
THE HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

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Introduction
The E-Verify program (formerly known as Basic Pilot) is a Web-based system that electronically verifies the employment eligibility of newly hired employees. This initiative is a partnership between the Department of Homeland Security (DHS) and the Social Security Administration (SSA). U.S. Citizenship and Immigration Services (USCIS), the agency in DHS responsible for immigration services, administers the program.

E-Verify is an essential tool for employers committed to maintaining a legal workforce. Any participating company in the United States can access E-Verify through a user-friendly government Web site that compares employee information taken from the Form I-9 with more than 449 million records in the SSA database, and more than 60 million records in DHS immigration databases. Currently, 99.5 percent of all work-authorized employees verified through E-Verify are verified without receiving a Tentative Non-confirmation (TNC) or having to take any type of corrective action. Those employees whose work authorization cannot be instantly verified are given the opportunity to work with SSA or USCIS, as appropriate, to confirm their work authorization. USCIS estimates one percent of all queried employees choose to contest an initial, tentative result from E-Verify showing that their work authorization could not be verified, and only half of those who contest that result are ultimately found to be authorized. The most recent statistics appear to show that the share of legal workers who are not instantly confirmed by E-Verify as work authorized is decreasing further, but those numbers need more study. Furthermore, USCIS plans to add the ability to query using passport information this fall, which will reduce the rate of TNCs for U.S. citizens further, and is also working to add visa and passport photos to the photo tool function.

Over 69,000 employers, representing over 269,000 worksites, currently are signed up to use the E-Verify program, and the number of registered employers is growing on average over 1,000 per week. E-Verify is the best available tool for employers to gain quick and easy verification information for their new hires, and we are committed to working with your Committee and other members of Congress to achieve our shared goal of effective employment eligibility verification.

History of the E-Verify Program
Congress established the Basic Pilot, now E-Verify, as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 to verify the employment eligibility of both U.S. citizens and noncitizens at no charge to the employer. The program was first made available on a voluntary basis in 1997 to employers in the five states with the largest immigrant populations: California, Florida, Illinois, New York and Texas. Originally set to expire in 2001, E-Verify has been extended twice, and is due for reauthorization by Congress by November 2008. Since 2004, it has been available to employers in all 50 states and in the U.S. territories where U.S. immigration laws apply.

Since 2006, the number of employers registered has doubled in size each year. We have seen a substantial increase in the number of states with legislation or Executive Orders that require E-Verify use for some or all employers under their jurisdiction. Arizona and Mississippi have laws

1

requiring all employers in the state to use E-Verify; and Colorado, Georgia, Minnesota, Oklahoma, North Carolina, Rhode Island, South Carolina and Utah require some employers to use E-Verify. A directive issued last year from the U.S. Office of Management and Budget (OMB) required all Federal government agencies to sign up to use E-Verify by October 1, 2007. Last August, the Administration pledged to commence a rulemaking process to require all Federal contractors and vendors to use E-Verify and OMB recently concluded its review on this proposed rule. On June 6, the President signed Executive Order 12989 directing the Secretary of Homeland Security to designate an electronic employment eligibility verification system for Federal contractors to use. Yesterday, the Secretary designated E-Verify as the system Federal contractors shall use.

Additionally, in the past few months a number of DHS regulations were published that require employers to register with E-Verify before obtaining certain benefits. These include (1) a regulation enabling certain F-1 students in Optional Practical Training to apply for a 17-month extension of their employment authorization if they are employed by an E-Verify registered employer and (2) the proposed rule reforming the H-2A agricultural worker program, would allow H-2A workers who are changing employers to begin work with the new employer before the change is approved only if the new employer participates in E-Verify. Participation and usage of E-Verify is expected to grow significantly over the next few years.

How E-Verify Works
Within three days of hiring an employee, the participating employer is required to enter information from the Form I-9 (Employment Eligibility Verification form), including the employee's name, date of birth, Social Security number (SSN) and citizenship status, into E-Verify and submit a query. Within seconds, the employer receives a response.

SSA Verification
For all workers, the system transmits, in a secure manner, the new hire's SSN, name, and date of birth to SSA to verify that data against the information recorded in its NUMIDENT database. For those employees whose work authorization status can be verified automatically (i.e. whose SSA record matched and confirms U.S. citizenship), the process ends here with a confirmation response returned to the employer through the system within seconds. In the remaining small minority of cases where the SSA record does not match what the employer has put into the system, the system issues an SSA TNC to the employer. The form is available in English or Spanish.

When a TNC is issued, the employer must notify the employee and give the employee the opportunity to contest that finding. If the employee chooses to contest the SSA TNC, he or she has eight business days to visit an SSA office with the required documents to initiate the process to prove identity and support the correction of the SSA record. Until the TNC is resolved, the employee must be allowed to keep working and cannot be fired or have any other employment-related action taken against him or her because of the TNC. If the employee fails to contact SSA within the eight-day period, the employee is considered a no-show and a final non-confirmation is issued by E-Verify. At this point, the employer should terminate employment. A recent electronic business process enhancement, EV-STAR, allows SSA to use the E-Verify system to

2

automatically inform the employer of the case resolution once the employee visits SSA and resolves the issue.

Correcting SSA records is a useful byproduct of the E-Verify process since it helps individuals identify and resolve problems with their Social Security records. The work done to update records in order to resolve an E-Verify mismatch may need to be done at a later time when the individual applies for Social Security benefits.

DHS Verification
If the query involves a noncitizen worker, the employee's name, date of birth and SSN are matched with SSA records as they are in U.S. citizen cases. If the information matches SSA records, then the DHS identification number and work authorization information are also matched against DHS databases. If the information cannot be verified electronically, the case is forwarded to a USCIS Immigration Status Verifier (ISV), who researches the case and provides an electronic response within one business day, either verifying work authorization or issuing a DHS TNC.

As with the SSA process described above, if the employer receives a TNC, the employer must notify the employee and provide him or her with an opportunity to contest that finding. An employee has eight business days to call a toll-free number (which provides support in ten different languages) to initiate the process to contest the finding. Until the TNC is resolved, the employee must be allowed to keep working and cannot be fired or have any other employment-related action taken against them because of the TNC. Once the necessary information from the employee has been received by phone or fax, a USCIS Immigration Status Verifier resolves the case, typically within three business days, by issuing either a verification of the employee's work authorization status or a DHS final non-confirmation. If the employee fails to contact DHS or SSA within the eight-day period, the employee is considered a no-show and a final non-confirmation is issued by E-Verify. At this point, the employer should terminate employment.

The Current E-Verify System
Under USCIS management and in cooperation with SSA, the program is continuously improving its processes to decrease mismatch rates and ensure that E-Verify is fast, easy to use, and protects employees' rights. Over the past year, E-Verify has automated its registration process, instituted a system change to reduce the incidence of typographical errors, incorporated a photo screening tool for DHS documents to combat more sophisticated forms of document and identity fraud, established Monitoring and Compliance staff to maintain system integrity, and added new databases that are automatically checked by the system. In addition, it has established a new process for employees to call USCIS' toll-free number to address citizenship mismatches as an alternative to visiting SSA, all in an effort to establish efficient and effective verification.

E-Verify is the most accurate and efficient way to verify employment authorization.
E-Verify generates "mismatches" (or TNCs) when the information supplied by the employee or employer does not match the information that either SSA or DHS has on file. In almost every case, a mismatch will occur either because the employee is actually not authorized to work (five percent of all queries based on the September 2007 Westat Evaluation); because the employee has not yet updated his or her records with SSA (for example, to reflect name or citizenship

3

status changes); or because the employer made an error inputting information into the system. Where there is a TNC, E-Verify gives the employee the opportunity to take further action and correct his/her record with the appropriate agency if they believe the mismatch is an error. Once a record is corrected, it remains corrected. That employee will likely not face another TNC if he or she takes a different job with another employer unless the employee has a subsequent change in his or her information. As noted above, correcting these records is important for individuals to receive credit for their full work history when they file for Social Security benefits. Moreover, correcting these records reduces the chance that they or their employers will receive no-match letter from the SSA pointing out a discrepancy between the employees' personal information and the social security number reported for them.

The opportunity to contest an E-Verify finding is an important step that seeks to ensure that no employee who is in fact work authorized is prevented from working. All employers are required to ensure that employees who receive a TNC are given the opportunity to contest that finding and correct their records. Legal workers who contest will be found employment authorized after resolution of the initial mismatch and suffer no permanent adverse consequences.

Recent studies show that E-Verify is an accurate and effective tool for verifying the work authorization status of employees. For the past few years, E-Verify has been independently evaluated by Westat, a social science research firm, which has monitored the effect of various changes made to the E-Verify system. Currently, 99.5 percent of all work-authorized employees verified through E-Verify were verified without receiving a TNC or having to take any type of corrective action. Though the 0.5 percent of all work-authorized employees who receive TNC is very small, our goal is to reduce it even further. Overall, Westat most recently found that over 94 percent of all cases queried through E-Verify are automatically found to be employment authorized

A large portion of the employees who successfully contest an SSA TNC are those who have recently naturalized. As of May 5, 2008, some of these mismatches no longer occur, as the system now automatically checks USCIS naturalization records before issuing a citizenship status mismatch. In addition, naturalized citizens who receive a mismatch are now able to contact DHS by phone to address the discrepancy. USCIS and SSA are also exploring 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 information for non-citizens to its databases as of May 5, 2008, which reduced E-Verify mismatches that resulted from noncitizen arrival information that had not yet been entered into the databases E-Verify previously verified against. The addition of this data to the E-Verify system is expected to reduce the number of mismatches that occur for newly arriving workers who entered the country legally and sought work immediately after having entered the country.

E-Verify plans to incorporate U.S. passport information into the employment verification process. The use of U.S. passport information will help instantly verify those employees who present U.S. passports as proof of employment authorization and identity and may have previously received TNCs since they derived citizenship as children when their parents

4

naturalized or they were born abroad to U.S. citizen parents; both populations which currently receive a disproportionate numbers of TNC. We are grateful for the hard work of the Department of State in working towards this important data sharing initiative.

These improvements all seek to ensure that the data relied upon by E-Verify is as up-to-date as possible. In some cases, however, the only way for a person's records to be kept accurate is for that person to report name changes and the like to SSA. Because not everyone in the U.S. workforce is unfailingly diligent in this area, there will always be a small number of legal workers who will have to go through the TNC process. Nevertheless, we continue to work on the system to ensure that every error that can be prevented through government data processes will be avoided.

E-Verify is an efficient and easy system for employers to use.
Participating employers are largely satisfied with the E-Verify program. Last year, the Westat evaluation reported that "[m]ost employers found the Web Basic Pilot (E-Verify) to be an effective and reliable tool for employment verification" and 96 percent did not believe that it overburdened their staffs.

The E-Verify program has substantially increased its customer service and program staff over the past two years in an effort to work with employers and ensure that every question or difficulty that arises is addressed. The E-Verify program outreach staff has conducted numerous training programs and workshops across the country to inform employers about the system and the benefits of using E-Verify to verify the work-authorization of their employees.

E-Verify program staff is committed to maintaining the integrity of the system and effectively preventing discrimination and misuse.
An effective electronic work authorization verification program is critical to reducing the job magnets that encourages illegal immigration, but the program also must include robust tools to detect and deter employer and employee fraud and misuse. A recent independent evaluation of the E-Verify program found that employer compliance with program procedures is improving, but identified the 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 in decreasing unauthorized employment. We are dedicated to reducing E-Verify misuse through employer training, educational outreach, print and electronic resources, and our monitoring and compliance program.

USCIS has been conducting extensive outreach across the country to inform both employees and employers of their rights and responsibilities within E-Verify. The goal is to reinforce understanding of how to use the program correctly. Materials about employer and employee rights and responsibilities are currently available in both English and Spanish, and will be available later this year in additional languages. Outreach efforts have included radio, print and billboard public awareness campaigns in Arizona, Georgia, DC, Maryland, Virginia, and soon Mississippi, as well as nationally available internet advertisements.

5

USCIS has also been working to further inform employers and employees on the proper E-Verify procedures through system materials. Information on employee rights and responsibilities is now included in the referral letters given to employees during the TNC process. We are also working to refine the training materials and online resources for users of the program to more clearly outline the methods for proper system use.

USCIS has begun preliminary monitoring and compliance of employer program usage to detect and deter potential misuse and abuse of the program. Among the behaviors we are looking out for are SSNs or alien numbers fraudulently being used, whether the employer is properly referring workers who receive TNCs, and or taking adverse actions against such workers, and whether an employer is improperly attempting to verify all existing employees. USCIS works closely with the Department of Justice Office of Special Counsel for Immigration-related Unfair Employment Practices (OSC) for Unfair Immigration Related Employment Practices to help ensure that employment authorized employees are not adversely impacted by the program.

The Monitoring and Compliance unit also works to safeguard personal privacy information; prevent the fraudulent use of counterfeit documents; and refer instances of fraud, discrimination, and illegal or unauthorized use of the system to enforcement authorities. Once fully staffed, the E-Verify Monitoring and Compliance unit will carry out its mission by educating employers on compliance procedures and guidelines and providing assistance through compliance assistance calls. The unit will also conduct follow-up with desk audits and/or site visits to unresponsive employers if necessary, and refer cases of fraud, discrimination and illegal use to OSC or U.S. Immigration and Customs Enforcement (ICE), as appropriate.

E-Verify prevents certain types of document fraud.
We are aware that some aliens without work-authorization use identity fraud to obtain employment in this country. To help prevent this problem, the E-Verify program introduced a photo screening capability into the verification process last September. This tool allows employers to determine if the DHS document presented by the employee has been photo-substituted. Through use of the photo-tool, several cases of document and identity fraud have been identified, and unauthorized workers have been prevented from illegally obtaining employment. 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. The goal of the photo tool is to help employers determine whether the document presented reasonably relates to the individual and contains a valid photo. All employers registered to use E-Verify, with the exception of those who use designated agents or a web services application, are now using the photo screening process when the worker presents one of the documents currently available in the photo tool database. USCIS is currently working to change the business processes for designated agents and web services users of E-Verify to enable them to use this photo screening capability

We are also working to expand the types of documents for which the E-Verify system will allow photo confirmation. Currently, only DHS-issued identity documents are displayed in the photo tool. To this end, USCIS is working with the Department of State to add visa and passport photos to the photo tool database. The strength of this tool is directly dependent on the range of documents for which it can be used, and our long-term goal is for the E-Verify photo screening

6

process be able to verify the photos on all identity documents that an employee may present as acceptable Form I-9 documentation.

USCIS is aware of the prevalence of identity fraud in this country, and is especially concerned with how this practice affects E-Verify. While we do not currently have any way to identify, upon initial verification, identity fraud by an employee who has stolen a valid SSN and identity information or has been supplied the information by their employer, we are examining ways to do so. What we are able to do with our Monitoring and Compliance unit is to identify indications that SSN fraud has taken place, and work with ICE, in cooperation with the SSA Inspector General, to deal with these cases. USCIS and ICE are currently finalizing a memorandum of understanding to identify instances where data sharing would be appropriate and we are currently identifying ways to assist each others' work.

The E-Verify program infrastructure is capable of handling the volume of queries that would be necessary for a nationwide mandatory employment verification system.
In September of 2007, DHS and SSA conducted cooperative end-to-end load testing between SSA's NUMIDENT database and the Verification Information System (VIS), which is the database that supports E-Verify. The results of the testing showed that E-Verify has the capacity to handle up to 60 million queries per year. This capacity is in line with the projected 60 million new hire queries per year that would result from mandatory E-Verify legislation applicable to all U.S. employers. DHS will continue to work with SSA to update the current pilot architecture to ensure that DHS and SSA can provide the most stable environment possible to the employer community and to create an independent environment for E-Verify queries, separate from SSA's other processing needs.

<u>**Conclusion – The Future of E-Verify**</u>
We will continue to work with SSA to operate and enhance the E-Verify program. Thank you for the opportunity to testify before this Subcommittee and we appreciate this subcommittee's continued support of the E-Verify program as it goes through the reauthorization process in the fall.

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