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IRCA Anti-Discrimination Amendments of 1990

Statement of
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Before the Subcommittee on Immigration,
Refugees and International Law
Committee on the Judiciary
House of Representatives

Mr. Chairman and Members of the Subcommittee:

We are pleased to appear before you today to discuss H.R. 4421, the proposed "IRCA Anti-Discrimination Amendments of 1990." The bill would (1) extend for 2 years IRCA's existing requirements for GAO reports on the law's effects, (2) place seasonal agriculture workers under the law's antidiscrimination protections, (3) require the Justice Department's Special Counsel to establish regional offices in particular locations, and (4) require the Special Counsel to conduct a campaign to educate employers and the public on the law's antidiscrimination provisions.

Our testimony today is based primarily on the findings of our recent report to Congress, Immigration Reform: Employer Sanctions and the Question of Discrimination (GAO/GGD-90-62, Mar. 29, 1990). Congress mandated that we determine whether widespread discrimination has resulted solely from the law. And we determined that there was widespread discrimination linked to the law. Making such a link, however, is exceedingly difficult. We used various techniques and approaches to try to measure the discrimination and determine the link. None of these techniques or approaches was or could be ideal. Some may disagree with our conclusion. But, on the basis of employers' responses to key questions we asked about their hiring behavior and how it related to provisions of IRCA, our judgment is that a substantial amount of the discrimination did occur as a result of IRCA.

We identified three possible reasons why the law caused discrimination: (1) lack of understanding of the law's requirements, (2) confusion and uncertainty on the part of employers about how to determine employment eligibility, and (3) the prevalence of counterfeit and fraudulent documents that contributed to employer uncertainty over how to verify eligibility.

We believe that the widespread pattern of discrimination could be effectively reduced by (1) increasing employer understanding of the law through education efforts, (2) reducing the number of work eligibility documents, (3) making the documents harder to counterfeit, thereby reducing document fraud, and (4) applying the new documents to all members of the workforce. These actions would make it easier to comply with the law. They would relieve employer concerns about counterfeit documents, and they would reduce employer confusion over the many documents which can now be used for verifying work eligibility.

H.R. 4421 retains the verification and sanctions system for the present while seeking to reduce its discriminatory impact. We believe this is a sound approach. We also believe that the bill includes some of the initiatives needed to combat IRCA-related discrimination. Most notably, section 5 of the bill would

establish an education campaign conducted by the Special Counsel, in coordination with the Equal Employment Opportunity Commission and the Department of Labor. This implements our recommendation that the Attorney General direct the Special Counsel to increase the government's efforts to educate the nation's employers on how to comply with IRCA's antidiscrimination provision. We believe these efforts should be targeted toward employers we found were more likely to discriminate--employers in areas with high Hispanic and Asian populations and medium-size employers.

The bill, however, fails to address the improvements that we believe are needed in IRCA's verification system. While education will help, fundamental reform in IRCA's current verification system is essential if IRCA-related discrimination is to be effectively reduced. These reforms should reduce the number of valid eligibility documents and are a step in the right direction. However, we realize that reducing the number of eligibility documents will raise many concerns--including civil liberties issues and cost and logistics issues. Should Congress opt for this solution, it will have to carefully weigh these concerns as it pursues the dual objectives of assuring that jobs are reserved for citizens and legal aliens while reducing discrimination in the employment process. Both objectives are important.

Feasible alternatives exist to reduce the number of work eligibility documents. These alternatives range from INS' current plan to reduce from 10 to 2 the types of cards it issues to a plan that would require a single eligibility card for both aliens and citizens--such as the Social Security card, or a state driver's license or other state identity card with the Social Security number on it.

We would also like to offer our comments on two other provisions of H.R. 4421.

Section 3 of the bill would amend IRCA to extend its antidiscrimination protections to seasonal agricultural workers who obtain temporary resident status under the law. In the survey of employers we conducted for our recent report to Congress, we selected a separate sample of agricultural employers. Although this sample represented only about 1 percent of our overall sample, agricultural employers reported that they began discriminatory practices as a result of the law at about the same rate as non-agricultural employers. For this reason, we believe the agricultural workers affected by these practices should receive the same protections against discrimination that IRCA provides to other workers.

Section 4 of the bill would require the establishment of Special Counsel regional offices in five specified cities. Our analysis supports the establishment of regional offices. These offices

could help implement the Special Counsel's education and outreach programs in areas of the country where employers in our survey reported high levels of national origin discrimination resulting from the law. However, deciding the specific location of regional offices might be better left to the Special Counsel and the Attorney General, to be determined based on the information in our report and other sources on the levels of discrimination in various areas of the country.

Finally, we would like to discuss GAO's future role in addressing employer sanctions and the question of discrimination. In our view, little purpose would be served by simply extending IRCA's existing requirements for reports and determinations by GAO for 2 years, as proposed by H.R. 4421. We believe that no significant new information and insights could be developed until major initiatives are taken to combat IRCA-related discrimination and are given a chance to operate for a reasonable period of time. In this regard, we believe it would be useful for GAO to issue an interim report 2 years after the enactment of any initiatives to enhance IRCA's employer verification system and antidiscrimination provisions. This report could focus on how well the new initiatives were operating. For example, it could describe the expanded education program, whether it was adequately designed and funded, and whether it was being carried out diligently.

The interim report could be followed by a final GAO report issued 4 years after the date of enactment of the reform initiatives. This report could address (1) whether and to what extent IRCA-related discrimination still existed at the time of that final report, and (2) if IRCA-related discrimination did exist, how effective the reforms were in combating it. Following issuance of this final report, Congress could consider changing employer sanctions if it wanted to.

However, we strongly recommend that any mandate for further GAO reports concerning IRCA-related discrimination omit the current language from IRCA that (1) specifically requires GAO to determine whether a "widespread pattern of discrimination" exists which has "resulted solely" from employer sanctions, and (2) triggers expedited procedures for repeal of sanctions on this basis. The Congress never precisely defined the term "widespread." As we noted in our March report, there is no ideal methodology to conclusively establish a cause-effect relationship.

Instead of the current IRCA approach, we recommend that any bill language leave GAO discretion to determine what methodology and criteria to use for its final report and how to characterize its findings based on the information and methodologies developed. Likewise, we think Congress should be free to consider amending IRCA under whatever criteria it deems appropriate, rather than being limited to predetermined formulas such as a "widespread

pattern" of discrimination and discrimination caused "solely" by sanctions.

Attached to our statement today is draft bill language for additional GAO reporting requirements that we believe would fulfill the objectives we have discussed. We would be pleased to work with the Subcommittee on this language.

Mr. Chairman, that concludes my prepared statement. We would be pleased to respond to questions.

ATTACHMENT

PROPOSED REVISION TO SECTION 2 OF H.R. 4421

Sec. 2(a). Section 274A(j) of the Immigration and Nationality Act (8 U.S.C. 1324a(j)) is amended to read as follows:

"(j) GENERAL ACCOUNTING OFFICE REPORTS.--

"(1) IN GENERAL.-- The Comptroller General of the United States shall review the implementation and enforcement of the provisions of the IRCA Anti-Discrimination Amendments of 1990, as well as any other actions taken to enhance the implementation and enforcement of the provisions of sections 274A and 274B of this Act, as amended (8 U.S.C. 1324a and 1324b, respectively), and shall prepare an interim and final report on the results of such reviews. The interim report, to be transmitted to the Congress within two years following the date of enactment of the IRCA Anti-Discrimination Amendments of 1990, shall describe and evaluate the actions taken pursuant to these Amendments and otherwise to enhance the implementation and enforcement of sections 274A and 274B. The final report shall address, based on the most reliable information and methodologies that the Comptroller General reasonably can develop, the following issues:

"(A) whether and to what extent implementation of section

274A of this Act is resulting in discrimination (against other than unauthorized aliens) on the basis of national origin or citizenship status; and

"(B) whether and to what extent actions taken pursuant to this Act and otherwise have been effective in combating any such discrimination.

Each report shall include such other information, findings and recommendations as the Comptroller General considers appropriate.

"(2) REVIEW AND COMMENTS BY JOINT TASK FORCE.--The Attorney General, jointly with the Secretary of Labor, the Chairman of the Commission on Civil Rights and the Chairman of the Equal Employment Opportunity Commission, shall establish a task force to review each report of the Comptroller General transmitted under paragraph (1) of this subsection. Within 25 days following the transmittal of each report, the task force shall submit to Congress its comments on the report, including its response to each recommendation contained in the report, together with any recommendations of the task force.

"(3) CONGRESSIONAL HEARINGS.-- The Committees on the Judiciary of the House of Representatives and of the Senate shall hold hearings respecting each report of the Comptroller General within 30 days after its transmittal."

(b). Subsections 274A(k), (l), (m) and (n) of the Immigration and Nationality Act (8 U.S.C. 1324a(k), (l), (m) and (n)) are repealed.

(c). Subsection 274B(k) of the Immigration and Nationality Act (8 U.S.C. 1324b(k)) is repealed.