



STATEMENT

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REGARDING A HEARING ON

"IMMIGRATION ENFORCEMENT AT THE WORKPLACE:
LEARNING FROM THE MISTAKES OF 1986"

BEFORE THE

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY and
CITIZENSHIP

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226 Senate Dirksen Building

CHAIRMAN CORNYN AND MEMBERS OF THE SUBCOMMITTEE, it is an honor for me to appear before you today to share U.S. Immigration and Customs Enforcement's (ICE's) perspective on worksite enforcement and how ICE investigates and prosecutes employers engaged in the hiring of illegal aliens.

INTRODUCTION

Among the Department of Homeland Security (DHS) law enforcement agencies, ICE has the most expansive investigative authority and the largest force of investigators. Our mission is to protect our Nation and the American people by targeting the people, money and materials that support terrorist and criminal activities. The men and women of ICE accomplish this by investigating and enforcing the nation's immigration and customs laws. Working throughout the nation's interior, together with our DHS and other federal counterparts and with the assistance of state and local law enforcement entities, ICE has begun to change the culture of illegal employment across the country by pursuing the most egregious businesses engaged in the employment of illegal workers. ICE is educating the private sector to institute best hiring practices and garnering their support in identifying systemic vulnerabilities that may be exploited to undermine immigration and border controls. Strategically, a large part of our worksite enforcement efforts focuses on preventing access to critical infrastructure sectors and sites to prevent terrorism and to apprehend those individuals who aim to do us harm.

LESSONS FROM THE 1986 IRCA

ICE has a wealth of historical experience implementing the 1986 Immigration Reform and Control Act (IRCA). We know its strengths and shortcomings and I believe it will be beneficial to provide a quick historical review of worksite enforcement under IRCA.

To varying degrees and during specific time periods, the former INS focused on worksite violations by devoting a large percentage of their investigative resources to enforce the administrative employer sanctions provisions of IRCA. Conducting labor-intensive inspections and audits of employment eligibility documents only resulted in serving businesses with a Notice of Intent to Fine (NIF) or a compliance notice. Issuing monetary fines that were routinely mitigated or ignored had little to no deterrent effect. Not only were the results far from effective, the process involved endless attorney and agent hours in discovery and litigation to adjudicate and resolve cases. Egregious violators of the law viewed the fines as just a “cost of doing business” and therefore the system did not serve as a true economic incentive to change their business model.

Moreover, while IRCA required employers to review identity documents demonstrating employment eligibility, its compliance standard rendered that requirement meaningless and essentially sheltered employers who had hired unauthorized aliens. Under the 1986 law, an employer complied with the eligibility verification process by reviewing a document that reasonably appeared to be genuine. Employers were not required to verify the validity of a document and were not required to even maintain a copy of the documents that they reviewed. The apparent validity of a single document and the lack

of any available evidence regarding the document routinely prevented the government from proving that the employer knew the employee was illegal. The law should reasonably require the employer to review and retain relevant documents and information obtained during the verification process, as well as during the subsequent employment of a worker. It should not allow unscrupulous employers to be “willfully blind” to derogatory information or facts indicative of unauthorized status.

Another detrimental result of the documentation compliance standard established under IRCA was explosive growth in an increasingly profitable false document industry that caters to undocumented workers who purchase the documents necessary to gain employment.

A NEW APPROACH TO WORKSITE ENFORCEMENT

Based on these lessons, ICE’s current worksite enforcement strategy is no longer a piecemeal case-specific effort; instead, it is part of a comprehensive layered approach that focuses on how illegal aliens get to our country, the ways in which they obtain identity documents allowing them to become employed, and the employers who knowingly hire them.

The ICE worksite enforcement program is just one component of the Department’s overall Interior Enforcement Strategy and is a critical part of the Secure Border Initiative. Thus, under the new ICE paradigm, worksite enforcement incorporates a vast multitude of investigations and crimes as illustrated below. Using this approach ICE worksite

investigations now support felony charges and not just the traditional misdemeanor worksite violations under section 274A of the Immigration and Nationality Act. Let me give you some examples to explain what I mean.

Worksite enforcement includes critical infrastructure protection. Since 9/11, ICE has prioritized critical infrastructure. Just five days ago, an ICE investigation apprehended 55 illegal aliens working at a construction site at Dulles International Airport. Effective homeland security requires verifying the identity of not just the passengers that board the planes, but also the employees that work at the airports.

Worksite enforcement combats alien smuggling. In the last few months, we have made arrests at employment agencies that served as a conduit between the criminal organizations that smuggle illegal aliens into this country and the employers that willfully employ them.

Worksite enforcement also combats human trafficking. As the result of worksite enforcement actions, ICE has dismantled forced labor and prostitution rings, be it Peruvian aliens in New York or Chinese aliens in Maryland. The common thread is the greed of criminal organizations and the desire of unwitting aliens to come here to work. Human trafficking cases represent the most egregious forms of exploitation, as aliens are forced to work and live for years in inhumane conditions to pay off the debt they incur for being smuggled into the country.

Worksite enforcement involves financial crimes, commercial fraud, export violations, and trafficking in counterfeit goods. ICE enforcement efforts leverage our legacy authorities to fully investigate these offenses that involve the employment of illegal aliens to promote and further these other crimes.

By careful coordination of our detention and removal resources and our investigative operations, ICE is able not only to target the organizations unlawfully employing illegal workers, but to detain and expeditiously remove the illegal workers encountered. For example, in a recent case in Buffalo, New York, involving a landscape nursery, 34 illegal workers were apprehended, detained and voluntarily repatriated to Mexico within 24 hours.

This sends a strong message to both the illegal workers here and to foreign nationals in their home countries that they will not be able to just move from job to job in the United States once ICE shuts down their employer. Rather, they will be detained and promptly deported.

Of course, a key component of our worksite enforcement efforts targets the businesses and industries that deliberately profit from the wholesale employment of illegal aliens. On April 19, 2006, ICE agents executed 9 federal arrest warrants, 11 search warrants, and 41 consent searches at IFCO Systems (IFCO) worksite locations throughout the United States. In addition, ICE agents apprehended 1,187 unauthorized workers at IFCO worksites. This coordinated enforcement operation also involved investigative agents

and officers from the Social Security Administration, the Internal Revenue Service, and the New York State Police. The criminal defendants have been charged with conspiracy to transport and harbor unlawful aliens for a financial gain, as well as document fraud (8 U.S.C. Section 1324 & 18 U.S.C. Sections 1546 and 371, respectively).

Another recent example of our worksite efforts occurred on May 9, 2006, when 85 unauthorized workers employed by Robert Pratt and other sub-contractors for Fischer Homes, Inc., were arrested as part of another ICE-led joint federal, state and local investigation. In this case the targets of the investigation knowingly harbored, transported and employed undocumented aliens. Five supervisors were arrested and charged with harboring illegal aliens. (8 U.S.C. Sections 1324 & 1326). 80 of the 84 illegal workers encountered were detained and 12 have already been removed from the United States.

What impact will this have? Criminally charging employers who hire undocumented aliens will create the kind of deterrence that was previously absent in enforcement efforts. We are also identifying and seizing the assets that employers derive from knowingly employing illegal workers, in order to remove the financial incentive to hire illegals and to pay them substandard wages.

To be clear, the magnet of employment is fueling illegal immigration, but the vast majority of employers do their best to comply with the law. ICE has provided training and tools on our website to help employers avoid violations.

However, just as a chain is only as strong as its weakest link, the employment process cannot permit the widespread use and acceptance of fraudulent identification documents. Accordingly, in April 2006, Deputy Attorney General Paul McNulty and I announced the creation of ICE-led Document and Benefit Fraud (DBF) Task Forces in 11 major metropolitan areas. These task forces focus on the illegal benefit and fraudulent document trade that caters to aliens in need of fraudulent documents in order to obtain illegal employment. The DBF Task Forces are built on strong partnerships with entities such as U.S. Citizenship and Immigration Services, the Social Security Administration, the U.S. Postal Inspection Service and the Departments of State, Justice and Labor. The DBF Task Forces identify, investigate and remove organizations that supply identity documents that enable illegal aliens, terrorists or criminals to integrate into our society undetected and obtain employment or other immigration benefits.

NEW TOOLS

ICE has made substantial improvements in the way we investigate and enforce worksites. Yet, we must do more and our experiences can inform your efforts to make that possible. DHS supports several of the additional tools contained in the immigration reform bill passed by the Senate, and we look forward to working with Congress as it considers comprehensive immigration reform, including proposals to enhance worksite enforcement.

NO-MATCH

There are millions of employers in the United States. Contained within the Social Security databases are statistics that show the employers with the greatest raw number,

and greatest percentage, of employees who have presented social security numbers that do not match official social security roles; this is known as “No-Match” data. We believe the availability of this data to DHS would greatly enhance worksite enforcement. Access to this data will allow ICE agents to quickly identify and remove unauthorized workers and identify employers who appear to rely on illegal workers as part of their business practices. In addition, access to this data will provide another tool to locate and remove fugitive aliens who have absconded from final orders of deportation. From a national security standpoint, access to SSA no-match data is essential to ICE’s efforts to identify criminal employers and vulnerabilities in critical infrastructure industries and sectors throughout the country. This represents one legislative fix that would go far toward ensuring that our workplace laws are upheld.

Additionally, provisions in current legislative proposals regarding document retention by employers, including evidence of actions taken by employers to resolve employment eligibility issues (e.g., SSA no-match letters), are crucial to worksite enforcement criminal prosecutions. Asking employers to retain documents for at least as long as the statute of limitations for these crimes is simply common sense. ICE has provided additional training and tools on our website to help employers avoid violations.

PROPOSED MODEL OF FINES AND PENALTIES

Although criminal prosecution of egregious violators is our primary objective in worksite cases, a need exists for a new and improved process of issuing fines and penalties that carry a significant deterrent effect and that are not regarded as a mere cost of doing

business. Only with a strong compliance program, combined with issuance of meaningful penalties, will the United States have an effective worksite enforcement program.

The Administration has proposed a streamlined administrative fines and penalties process that gives the DHS Secretary the authority to administer and adjudicate fines and penalties. We would further propose a penalty scheme that is based on clear rules for issuance, mitigation and collection of penalties.

In conclusion, I would like to thank the Subcommittee for its analysis and review of how to prevent the problems of 1986 from occurring again. As I have outlined in my testimony, ICE has made great strides in our worksite enforcement program and our efforts are part of a comprehensive strategy that focuses on several different layers of the problem simultaneously; including smuggling, document and benefit fraud, and illegal employment.

ICE agents are working tirelessly to attack the egregious unlawful employment of undocumented aliens that subverts the rule of law. We are working more intelligently and more efficiently to ensure the integrity of our immigration system.

Our responsibility at ICE is to do everything we can to enforce our laws, but enforcement alone will not solve the problem. Accordingly, the President has called on Congress to pass comprehensive immigration reform that accomplishes three objectives:

strengthening border security, ensuring a comprehensive interior enforcement strategy that includes worksite enforcement, and establishing a temporary worker program. Achieving these objectives will dramatically protect our infrastructure, reduce the employment magnet that draws illegal workers across the border, while eliminating the mistakes that accompanied the 1986 legislation.

ICE is dedicated and committed to this mission. We look forward to working with this Subcommittee in our efforts to secure our national interests. I hope my remarks today have been helpful and informative. I thank you for inviting me and I will be glad to answer any questions you may have at this time.