



STATEMENT

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REGARDING A HEARING ON

"IMPACTS OF BORDER SECURITY AND IMMIGRATION ON
WAYS AND MEANS PROGRAMS"

BEFORE THE

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COMMITTEE ON WAYS AND MEANS

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CHAIRMAN THOMAS, RANKING MEMBER RANGEL AND MEMBERS OF THIS COMMITTEE, it is an honor for me to testify before you today on what the Department of Homeland Security and U.S. Immigration and Customs Enforcement (ICE) are doing to enhance worksite enforcement of immigration laws.

INTRODUCTION

Worksite enforcement is a top priority for the Department and the Administration. In a recent speech before the U.S. Chamber of Commerce, the President said, “A comprehensive reform bill must hold employers to account for the workers they hire. It is against the law to hire someone who is in the country illegally. Those are the laws of the United States of America, and they must be upheld.” While the border attracts substantial attention, we must expand our focus if we are going to bring illegal immigration under control. A comprehensive solution is necessary because illegal immigrants are living and working throughout the nation, in every state and in many different industries. With this in mind, the Administration has proposed a comprehensive overhaul of the employment verification and employer sanctions program in the Immigration and Nationality Act as part of the President’s call for comprehensive immigration reform. With its extensive authorities and experienced investigators, ICE is qualified to carry out this comprehensive reform and is already achieving great success in the investigation and prosecution of employers engaged in the hiring of illegal aliens.

Among the 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 employers of illegal workers. ICE is educating the private sector to institute best hiring practices and garnering its support in identifying systemic vulnerabilities that may be exploited to undermine immigration and border controls. 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.

In short, our agents and investigators are enforcing the immigration laws of this country on a daily basis. However, if we do not make greater strides in this area, immigrants will continue to risk their lives for the prospect of a well-paying job in this country, often by turning to smugglers who exploit and force them to live in the shadows once they arrive.

LESSONS FROM THE 1986 IRCA

ICE knows the shortcomings of the IRCA and I believe it will be beneficial to provide a quick historical review of worksite enforcement under this Act.

To varying degrees and during specific time periods, the immigration investigators focused on worksite violations by devoting a large percentage of its investigative

resources to enforce the administrative employer sanctions provisions of IRCA. The resulting 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 inducement for them 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 could comply with the eligibility verification process so long as the document evidencing the employee’s authorization to work reasonably appeared to be genuine. Employers were not required to verify the validity of a document and were not required to maintain a copy of the documents that they reviewed. The ability of the employer to rely on the facial 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 not authorized to work. Thus, the law should reasonably require the employer to review and retain copies of relevant documents and information obtained during the verification process, as well as during the subsequent employment of a worker. It should also not allow unscrupulous employers to be

“willfully blind” to highly questionable documents or other facts indicative of unauthorized status.

Another detrimental result of the documentation compliance standard established under IRCA was an explosive growth in an increasingly profitable false document industry catering to undocumented workers seeking employment.

A NEW APPROACH TO WORKSITE ENFORCEMENT

ICE’s current worksite enforcement strategy is 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. A thorough and comprehensive worksite enforcement program is paramount to DHS’s goal of changing the culture of illegal employment in the United States. To that end, the Administration has outlined a proposal that would give DHS the tools it needs to effectively enforce employment immigration laws.

Worksite enforcement incorporates a 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.

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. In April of 2006, ICE conducted the largest such worksite enforcement operation ever undertaken. This case involved IFCO Systems, a Houston-based company. ICE agents executed 9 federal arrest warrants, 11 search warrants, and 41 consent searches at 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 Department of Labor, 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 financial gain (8 U.S.C. Section 1324 and 18 U.S.C. Section 371), as well as fraud and misuse of immigration documents (18 U.S.C. 1546).

In a recent worksite enforcement investigation in Baltimore, Maryland, owners of three restaurants pled guilty to conspiracy to commit alien harboring and conspiracy to engage in monetary transactions with criminally derived property; a fourth owner pleaded guilty to employment of illegal aliens. The defendants also agreed to forfeit to the United States approximately \$1.1 million in assets. Historically, agents were tasked with carrying out worksite enforcement investigations by utilizing administrative tools. In similar criminal investigations, agents typically would have conducted a Form I-9 inspection to determine

whether the employer was in compliance with IRCA. If investigators identified unauthorized workers in the course of the inspection, an enforcement operation would often follow. Upon apprehension, the workers' statements would serve as evidence of possible "knowingly hired" violations. Under this old way of doing business, the fine imposed on the owners of the restaurants would have ranged from approximately \$4,000 to \$33,000 before mitigation.

Worksite enforcement includes critical infrastructure protection. Just last month, 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 conduits 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 threads are the greed of criminal organizations and the desire of 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 use our legacy authorities to fully investigate these offenses that involve the employment of illegal aliens to promote and further these other crimes. As an example, earlier this month ICE agents in Florida arrested two individuals pursuant to an indictment charging them with operating an illegal money service business in violation of Title 18, United States Code, Section 1960. This investigation discovered that local construction companies were utilizing an illegal money service business to pay illegal aliens for construction work.

By careful coordination of its detention and removal resources and its investigative operations, ICE is able to target the organizations unlawfully employing illegal workers, as well as 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.

Another recent example of our worksite efforts occurred in May of 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. Section 1324).

What impact will this have? Criminally charging employers who hire undocumented aliens will create the kind of deterrence that previous enforcement efforts did not generate. 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 unauthorized workers 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. With this in mind, ICE has developed a voluntary corporate outreach program aimed at strengthening overall hiring practices in the workplace. This outreach program will emphasize enhanced employer compliance through corporate due diligence, training and sharing of best practices. This program provides employers ways to prevent immigration violations in their business and works toward changing the culture of tolerance for those who employ illegal workers. The program will answer the need for clear and reasonable standards of good conduct for employers by asking them to take certain reasonable steps, including reviewing employee documents, using the electronic verification system and retaining all documents relevant

to their employees' eligibility to work. Employers who are shown to have hired a significant number of unlawful aliens in a year, notwithstanding these tools to verify employee eligibility, should be presumed to have knowingly hired these individuals. We also need to ensure that employers cannot use contract arrangements to separate themselves from complicity in the illegal hiring of their contractors, which can be accomplished through a tightening of the rules. ICE has provided additional training and tools on its website to help employers avoid violations.

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 seeking 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 Task Forces identify, investigate and dismantle organizations that supply identity documents that enable illegal aliens, terrorists and other criminals to integrate into our society undetected and obtain employment or other immigration benefits.

The House and Senate have both passed immigration legislation this Congress that include provisions authorizing a mandatory electronic employment eligibility verification system (EEVS) for all seven million U.S. employers. An Employment Verification

Program managed by U.S. Citizenship and Immigration Services that includes all U.S. employers, monitoring and compliance functions, and a fraud referral process, can help deter and detect fraud by both employers and employees. As currently envisioned, EEVS will include robust systems monitoring and compliance functions that will help detect and deter the use of fraudulent documents, imposter fraud, and incorrect usage of the system by employers (intentionally and unintentionally). EEVS also will promote compliance with correct program procedures. USCIS will forward enforcement leads to ICE, and the monitoring unit will scrutinize individual employers' use of the system. It also will conduct trend analysis to detect potential fraud. Findings that are not likely to lead to enforcement action (e.g., the user has not completed training) will be referred to compliance officers for follow-up. Findings concerning potential fraud (e.g., Social Security numbers being run multiple times and employers not indicating what action they took after receiving a final non-confirmation) will be referred to ICE worksite enforcement investigators. It is essential that DHS have the authority to use information arising from the Employment Verification Program to enforce our Nation's laws, including deterring and prosecuting fraud, and identifying and removing criminal aliens and other threats to public safety or national security.

NEW TOOLS

ICE has made substantial improvements in the way we investigate and enforce worksites. DHS supports several of the additional tools contained in pending legislation, and we look forward to working with Congress as it considers comprehensive immigration reform, including proposals to enhance worksite enforcement.

NO-MATCH

The Administration has sought the authority to have additional access to Social Security Administration no-match data to improve immigration enforcement. Greater access to no-match data would provide important direction to ICE investigators to target their enforcement actions toward those employers who have a disproportionate number of these no-matches, who have reported earnings for multiple employees on the same number and who are therefore more likely to be engaging in unlawful behavior.

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.

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.

As I have outlined in my testimony, ICE has made great strides in its worksite enforcement program and its 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 improve the security of our infrastructure and reduce the employment magnet that draws illegal workers across the border, while eliminating the problems created by the 1986 law.

ICE is dedicated and committed to this mission. We look forward to working with this Committee 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.