



STATEMENT

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REGARDING A HEARING ON

"IS THE FEDERAL GOVERNMENT DOING ALL IT CAN TO
STEM THE TIDE OF ILLEGAL IMMIGRATION?"

BEFORE THE

HOUSE COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON REGULATORY AFFAIRS

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2154 Rayburn House Office Building

CHAIRWOMAN MILLER AND MEMBERS OF THE SUBCOMMITTEE, thank you for welcoming me here today to share with you information about the U.S. Immigration and Customs Enforcement (ICE) of the Department of Homeland Security's efforts in worksite enforcement and how we are investigating and prosecuting employers that hire 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 is vigorously pursuing the most egregious employers of illegal workers. ICE is educating the private sector to institute best hiring practices, and with its support is 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. That is why the Administration has proposed a comprehensive overhaul of the employment verification and the employer sanctions program as part of the President's call for comprehensive immigration reform.

THE 1986 IRCA AND LESSONS LEARNED

ICE has substantial experience as a result of its role in 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 review of worksite enforcement under IRCA.

In the past, immigration investigators, to different degrees and during specific time periods, focused on worksite violations by devoting a large percentage of investigative resources to enforcement of 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. Monetary fines that were routinely mitigated or ignored had little to no deterrent effect. The results were far from effective and 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 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 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 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 documentation or other 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 catering to undocumented workers seeking employment.

WORKSITE ENFORCEMENT: A NEW AND BETTER APPROACH

ICE’s current worksite enforcement strategy 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.

ICE is bringing criminal prosecutions and using asset forfeiture as tools against employers of illegal aliens far more than the former U.S. Immigration and Nationalization Service, which tended to rely on administrative fines as a sanction against such activity. 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 an example.

A recent example of our worksite efforts occurred in April of 2006, when ICE conducted the largest such worksite enforcement operation ever undertaken. This case involved IFCO Systems, a Houston-based company. ICE agents executed nine 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, 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 financial gain (8 U.S.C. 1324 and 18 U.S.C. 371), as well as fraud and misuse of immigration documents (18 U.S.C. 1546).

Worksite enforcement combats alien smuggling. Alien smuggling is the importation of people into the United States involving deliberate evasion of immigration laws. This

offense includes bringing illegal aliens into the United States, as well as the unlawful transportation and harboring of aliens already in the United States. 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 includes critical infrastructure protection. In June of this year, an ICE investigation apprehended 55 illegal aliens working at a construction site at Dulles International Airport, just outside Washington, DC. 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 and have access to secure and sensitive areas that can be exploited by terrorists or other criminals.

Worksite enforcement also combats human trafficking. ICE has dismantled forced labor and prostitution rings through its worksite enforcement actions, be they Peruvian aliens in New York or Chinese aliens in Maryland. The common threads are 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 combats trafficking in counterfeit goods, commercial fraud, financial crimes, and export violations. ICE enforcement efforts leverage our legacy

authorities to fully investigate 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.

Such actions send a strong message to illegal workers here and to foreign nationals in their home countries that they will not be able to 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. In May of 2006, 85 unauthorized workers employed by Robert Pratt and other sub-contractors for Fischer Homes, Inc., were arrested as part of an 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.

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.

The magnet of employment is clearly 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, the growing prevalence of counterfeit documents interferes with the ability of legitimate employers to hire lawful workers. In short, the employment process cannot continue to be tainted by the widespread use and acceptance of fraudulent identification documents.

Accordingly, in April 2006, Deputy Attorney General Paul McNulty and Assistant Secretary of Homeland Security for ICE Julie Myers 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 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.

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. We look forward to working with Congress as it considers comprehensive immigration reform, including proposals to enhance worksite enforcement.

SOCIAL SECURITY NO-MATCH DATA

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.

FINES AND PENALTIES: A PROPOSED MODEL

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. The United States can have an effective worksite enforcement program only

with a strong compliance program, combined with issuance of meaningful, enhanced penalties that compound for repeat offenders.

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 greatly advanced its worksite enforcement program and its efforts are part of a comprehensive strategy that focuses on several different layers of the problem simultaneously; including illegal employment, document and benefit fraud, and smuggling.

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 mistakes that accompanied the 1986 legislation.

ICE is dedicated and committed to this mission. 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. That is why we, and the President, support comprehensive immigration reform that includes interior and border enforcement in addition to a temporary worker program. We look forward to working with this Subcommittee in our efforts to secure our national interests. Thank you for inviting me and I will be glad to answer any questions you may have at this time.