
U.S. COMMISSION ON IMMIGRATION REFORM

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Before the U.S. House of Representatives
Committee on the Judiciary
Subcommittee on International Law, Immigration and Refugees
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Mr. Chairman, members of the Subcommittee, thank you for providing this opportunity to testify today about the Commission's recommendations to deter the employment of unauthorized workers. As the members of this Committee know, the Commission was established under the Immigration Act of 1990 and mandated to report to Congress on the implementation and impact of U.S. immigration policy. We will submit our first report tomorrow. I welcome the opportunity to return to this room to testify on the full range of recommendations included in the report. For today, I will limit my remarks to the Commission's recommendations on worksite issues.

But before getting into our specific recommendations in this area, let me set them in context. The Commission is convinced that immigration can be managed more effectively. We also believe we can do it in a manner that is consistent with our traditions, civil rights, and civil liberties. As a nation committed to immigration and the rule of law, it is our obligation to find solutions to our current immigration problems. And, the principal problem we face today regarding immigration is the unauthorized entry of hundreds of thousands of illegal aliens each year.

Unlawful immigration will not be curbed unless we have comprehensive strategies that will prevent the entry of those with no right to be here and remove those who somehow make it past our best efforts at border management. At the same time, we must better support our capacity to facilitate the legal entry of those whose admission is in our national interest.

Key to effective deterrence is a reduction in the job magnet. Employment continues to be the principal reason illegal aliens come to this country. As long as U.S. businesses benefit from the hiring of unauthorized workers, control of unlawful immigration will be impossible. The Commission believes that both employer sanctions and enhanced labor standards enforcement are essential components of a strategy to reduce employment opportunities for illegal aliens.

The Commission has found major flaws in the current application of employer sanctions. They have not deterred unlawful immigration, but they have caused discrimination. At each of our hearings, we heard about how easy it is to thwart the intent of the law. For \$25, any illegal alien can purchase a counterfeit drivers license and social security card. For a bit more, they can buy a counterfeit green card. With these documents, they can get a job in almost any business in this country. At the same time, there is discrimination against foreign-looking or -sounding citizens and legal immigrants. Employers are confused by the requirements and feel themselves between the proverbial rock and a hard place: if they accept documents on their face, they may be hiring

illegal aliens; if they ask for additional documentation without sufficient cause, they will be discriminating.

But, are these problems inherent to employer sanctions? We think not. The problem is with a faulty verification procedure.

The Commission's recommendations to improve the verification procedure have drawn more attention than any others in our report. Unfortunately, they have also been misrepresented as a national ID card. What the Commission has recommended is a measured approach to the development of a new system for verifying that individuals are authorized to work in the United States-that is all. We believe the most promising option for alleviating the fraud and discrimination found in current verification procedures is a computerized registry based on the social security number. We urge the President carefully to phase in and evaluate pilot programs to test this option, something that can be done under current statutory authority. This Commission, along with others, will carefully monitor the pilots during the next three years to see how they meet our requirements for reliability, cost-effectiveness, and protection of civil rights and civil liberties. Should the results prove to be as promising as we hope and expect, we recommend that they form the basis for implementation of a national verification system.

Before I go into any details about this recommendation, let me say something to those who have already expressed concerns about this approach. This country has a problem. It is real. It is immediate. Simply put, if we cannot demagnetize our economy for illegal aliens who come here to seek jobs, we cannot control illegal immigration. If we cannot control illegal immigration, we cannot sustain our national interest in legal immigration. Those who come here illegally, and those who hire them, will destroy the credibility of our immigration policies and their implementation. In the course of that, I fear, they will destroy our commitment to immigration itself.

For immigration to continue to serve our national interest, it must be lawful. There are people who argue that some illegal aliens contribute to our community because they may work, pay taxes, send their children to our schools, and in all respects except one, obey the law. Let me be clear: that is not enough.

This is a nation governed by the rule of law. It applies to all. It is as illegal knowingly to hire someone who is breaking the law as it is illegal to work under false pretences. These recommendations are not just for the four million illegal aliens in our midst-an arguably small number given the size of the U.S. workforce. They are aimed, as well, at restoring credibility to our overall immigration policy, commitment to fair labor standards, respect for civil and human rights, and integrity of our social security system.

Some of those who agree with our assessment as to the weaknesses in employer sanctions reject our proposal for change in the verification system. Some call instead for the repeal of employer sanctions. This is the critical issue. If employer sanctions are repealed, it will be legal for employers knowingly to hire those who are breaking the law. This will seriously undermine efforts to prevent illegal migration. It will seriously erode labor standards. Thousands of

Americans will be subject to discrimination, exploitation, and denial of their rights. The Commission has considered and rejected this option.

Others call for more modest change-reduction in the number of documents used, requirements that all citizens present one set of documents and all aliens present another, and similar proposals. These ideas are variations on the current I-9 process. But the I-9 process does not do what the law intended-deter the employment of illegal aliens. And what it does do, we do not want-overburden businesses with paperwork and provide a convenient excuse, if not actually motivate, discrimination against Americans who happen to look or sound foreign. The Commission examined these and dozens of other options for reforming the I-9 process and rejected them as well. Under each of them, either fraud continued or discrimination increased.

If repeal of employer sanctions is not an option, and if reform of the I-9 does not appear workable, what then are we to do?

In a nutshell, the Commission believes that we can best address the twin flaws in employer sanctions by treating everyone the same, whether citizen or alien. Illegal aliens cannot hide from the law by claiming to be authorized workers; citizens will not face discrimination from those who mistakenly believe them to be illegal aliens. The key to what the Commission sees as the promising option is the social security number. All workers must already provide a social security number upon taking employment. The verification process that the Commission is looking at adds a step to this existing requirement: checking that the social security number is valid and has been issued to someone authorized to work in the United States.

The Commission urges the President immediately to initiate pilot programs testing the proposed computerized verification system. We would like to see the system tested in the five states with the highest levels of illegal immigration as well as in some less affected places. The pilots will permit testing of various approaches to using the proposed verification system. In particular, the pilots should determine the best way for employers to access the verification system to validate the accuracy of information given by workers. We have received conflicting testimony about the best way to check the applicant's identity. We have heard proposals for a more secure social security card, a counterfeit-resistant driver's license, and a telephone verification system that does not rely on any document. Several different options could be tested simultaneously in different states. The pilots present an opportunity to determine the most cost-effective, fraud-resistant, and nondiscriminatory method available.

Experts note that under any of these systems, the computer system could have a built-in process for identifying likely fraud. For example, if the same social security number was used too often or in too many locations, the computer system would record the incidence. The employer would be informed that the employee must reconfirm the information in the database. The authorized worker would benefit from learning that others were using his or her social security number. The unauthorized worker could not reconfirm the information and, therefore, would not be able to continue in that employment. The process also would permit estimates of likely fraud for use in determining the efficacy of the verification system.

In designing our recommendation, the Commission considered six principal issues.

The first issue is fraud. We must reduce not only the presence of counterfeit documents, but also the incentive to produce them. The Commission's proposal is to test a system that does not depend on any particular document-indeed, which may not depend on any document at all. All documents can be counterfeited. But it is infinitely more difficult to counterfeit the information that would be in the computer registry. An employee might show a counterfeit drivers license with a fraudulent social security number, but if that number does not exist or belongs to someone else, the computer registry is the most promising way to identify it.

The second is discrimination. As I mentioned, the best way to fight discrimination is to treat everyone exactly the same. Employers would no longer be required to care about a worker's immigration status. The only relevant question would be-"What is your name and social security number?"-a question every American employee has been asked for decades. There would be no singling out of any ethnic group for additional documentation, as happens now with the I-9 process, no going to one database if the employee is an alien-as happens under the current INS Telephone Verification pilot program-and another system if he or she is a citizen. No bigot will be able to claim employer sanctions as an excuse for discrimination.

The third is privacy. The Commission is aware of the proliferation of databases and the potential for the invasion of privacy by both government and private agencies. The computer registry will be drawn primarily from an existing database, the Social Security computer system. Given the scope of the registry, it is essential to build in explicit provisions for protecting privacy. These safeguards should be made by law, not just regulation. The resultant computer system should incorporate appropriate technical safeguards regarding authorized users' access to individual information. In particular, safeguards must ensure that information about specific individuals-other than the limited information to be provided as a part of the verification process itself-cannot be obtained from the database.

The fourth is civil liberties. Since previewing our recommendations in August, we have heard concerns that the computer registry will result in an infringement on personal liberties. The Commission takes this very seriously indeed. We recommend that appropriate, ironclad safeguards be built into the system from Day One to ensure that the verification system will be used for very limited purposes and those purposes alone-to verify work authorization and eligibility for public benefits. We also have heard concerns that some day in the future the registry will be perverted for other purposes. Let me say that I have more faith in the American political process. I expect and sincerely hope that all institutions concerned with preserving the Constitution will monitor closely the implementation not only of the pilot programs, but of any national system that may result from them. If they demonstrate that fears about civil liberties have been realized, I will be the first to testify before this body for the repeal of the verification process. And, if I am no longer here, I have every faith that others will take up the banner.

The fifth is the accuracy of the information used. The computerized registry will draw on data from the INS and the Social Security Administration. A prime prerequisite of this system is the integrity of those data systems. Of course for reasons completely separate from this registry, we would encourage that integrity. Why would we tolerate a situation where a government agency cannot answer basic questions for those it serves? No one paying into the Social Security System

should need worry whether someone else is fraudulently using his or her number. No immigrant should suffer because INS cannot find his or her file.

Both agencies will need to improve their own records, speed up the entry of new data into their own systems and the transfer of the necessary information to the jointly maintained registry, and ensure that the information remains accurate and accessible. The Commission recognizes that mistakes will happen, particularly during the early phase-in period of the pilot programs. We must have protections for workers who might otherwise lose jobs because of "false negatives" and for employers who might hire illegal aliens because of "false positives."

The sixth is cost. Informal estimates by the Social Security Administration indicate that this proposal is no budget breaker. The cost of design and development of the combined SSA/INS database is estimated at \$4 million over a two-year period. Annual cost of maintaining and operating the verification system is estimated at about \$32 million. This figure includes the cost of the computer registry, the automated system for checking social security numbers against it, operator costs for calls that cannot be handled automatically, and telephone lines for an 800-number to be used by employers.

Correcting errors will require the largest financial input. Discrepancies referred to SSA for resolution will cost approximately \$122 million initially, with an ongoing cost of \$30 million. The cost of resolving discrepancies in the INS database will be additional to these funds. For the most part, these funds should be spent even if there were no proposal for a computer registry. Otherwise, we would be saying that it is all right to have discrepancies in our Social Security and INS databases. For the integrity of both of these systems, we need to ensure that the data they already collect are accurate and accessible.

You asked me here today to testify about the Commission's recommendation on verification, but I would be remiss if I did not at least briefly address the Commission's other worksite proposals. First, we call for enhancements in the enforcement of labor standards. While we do not believe that labor standards alone will curb illegal immigration, we do strongly support enhanced labor standards enforcement as a necessary complement to employer sanctions. As for employer sanctions themselves, once changes are made in the verification system, higher priority should be given in INS to investigation of the knowing hire of illegal aliens. And, should the pilot programs prove effective, we would hope that this body would make some major changes in employer sanctions penalties to remove the ones for paperwork violations and enhance those for knowing hire and failure to verify a social security number. In our report, we also make recommendations regarding the coordination of labor standards and employer sanctions-recommendations that I won't discuss today but call to your attention.

Before finishing this testimony, I want to say a bit more about the issue of discrimination. As I mentioned, the Commission believes that the best defense against discrimination is adoption of a more secure, simpler verification process for determining work authorization. The current verification process creates discriminatory behavior among employers even in cases where no discrimination is intended or in which there is an explicit effort to avoid illegal conduct.

Even with this change in verification, however, discrimination on national origins and citizenship bases will not disappear. The Commission firmly believes there is a public responsibility to provide effective redress for those who are the victims of unfair employment practices. I hope you will pay as much attention to our recommendations on discrimination as you do to our recommendations on verification itself. The Commission urges the Office of Special Counsel for Immigration-Related Unfair Employment Practices to be far more aggressive than it has been in the past. OSC should be proactive in finding ways to prevent the occurrence of these unfair employment practices, to the extent possible, and seeking penalties against those employers who do discriminate.

I would be pleased to answer any questions that you have.

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