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

HEARING

BEFORE THE

SUBCOMMITTEE ON REGULATORY AFFAIRS

OF THE

COMMITTEE ON
GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

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

TUESDAY, JULY 25, 2006

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON REGULATORY AFFAIRS,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m. in room 2154, Rayburn House Office Building, Hon. Candice S. Miller (chairman of the subcommittee) presiding.

Present: Representatives Miller, Lynch, and Schmidt.

Also present: Representatives Bilbray and Foxx.

Staff present: Ed Schrock, staff director; Rosario Palmieri, deputy staff director; Kristina Husar, professional staff member; Benjamin Chance, clerk; Karen Lightfoot, minority communications director/senior policy advisor; Krista Boyd, minority counsel; and Cecelia Morton, minority clerk.

Mrs. MILLER. Good morning. I would like to call the Subcommittee on Regulatory Affairs to order.

I certainly want to welcome everyone to our hearing today on the Federal Government's ability to enforce current immigration laws against employers who flout the law by employing illegal workers with impunity, quite frankly.

If lawmakers are committed to stemming the tide of illegal immigrants across our borders, it is certainly essential to enforce the laws that we have against employing illegal aliens. It is the promise of these jobs, of course, that entices so many illegal aliens to leave their homeland, and to risk the perils of a border crossing. However, through generations of practice, they have learned that once in America, they are home free, essentially. Many employers have also come to realize that no one is checking up on them. And in some industries, this makes the lure of cheap illegal labor almost irresistible.

These immigrants and employers long ago figured out the very sorry fact that we have only recently become aware of, that the 1986 immigration law was designed to fail. The current system in place hampers the ability of the Federal Government to enforce immigration laws and to crack down on employers who openly disregard the law.

Let me briefly detail some of the problems that we think are in the provisions that currently prevent the Federal Government from being as proactive as one would like us to be.

No. 1, with respect to documentation, there is a very low level of certainty that employee documents are valid, because employers are forced to accept a diverse variety of identification, sort of the breeder documents and work authorization documentation. Unless a prospective employee's i.d. is obviously fake, the employer must accept it. These identification documents include school i.d. cards, Canadian driver's licenses, school report cards and day care or nursery school records as proof of identity.

Additionally, the 1986 immigration law set the penalties for violating the law very low and the standard for proving the violation very high. There is no requirement that employers retain copies of the identification and work authorization documents that they review or any subsequent documentation that they might receive that pertains to the work authorization of the individual. This of course not only makes the immigration laws very difficult to enforce, it also provides a perverse incentive for the proliferation of a fraudulent document and identity theft.

No. 2, the current legal framework puts up firewalls between the Social Security Administration and the Department of Homeland Security that prohibit the Social Security Administration from sharing actionable information about the most egregious violators of immigration law with the Immigration and Customs Enforcement [ICE], the agency charged with enforcing the 1986 immigration law and of course the 1996 reform legislation as well.

SSA has a data base called the Earning Suspense File that could be used to crack down on employers who hire illegal workers. However, SSA has no authority to take action against the employer who submits wage reports that contain what they call "no matches."

Additionally, SSA is interpreting the IRS Code to prevent them from sharing information derived from wage reports with any other agency, absent explicit statutory authorization. ICE has indicated that access to some of this information would be a very valuable tool to help focus their enforcement activities.

Meanwhile, the IRS is the only agency with both the W–2 information and the enforcement capability, based on their authority to target individuals who submit fraudulent tax documents. Unfortunately, the IRS seems to have decided as a matter of policy and priority to not pursue these violations. I am sure we are going to get to that in today's questioning.

And then No. 3, finally and perhaps most disturbing, is that no Government entity is really charged with inspections of the I–9 forms, absent reasonable suspicion of wrongdoing. The Department of Labor has authority to review the I–9 documents, but I–9 inspections occur only as an inquiry of a directed fair labor investigation. The Department of Homeland Security also has authority to review I–9s, but they have to rely on tips. And if they are denied access to the ESF, the Department of Homeland Security has very limited ability to target private sector employers who consistently violate our laws.

To use a tongue in cheek example, this would be like asking all Americans to go ahead and file their taxes in good faith with zero threat of IRS inspectors ever checking on our submissions.

In summary, Congress has devised a system that asks employers to be familiar with 30 plus obscure documents under penalty of

law, but with a wink and a nod declines to establish a system to verify compliance of these laws. Quite frankly, it is my personal observation that this pervasive attitude and our very porous border situation has evolved over several decades. It didn't just happen during this Congress or this administration or the last Congress or the previous administration. As I say, it has happened over a number of decades.

And really again, my personal observation is it is only recently that the American public, as is often the case, is ahead of the politicians. Because the American public is losing their sense of humor with the porous border situation and the lax enforcement of our current immigration laws, Congress finally is developing the political will to focus our attention and resources on this problem.

And I think this is going to be a very, very interesting hearing. Certainly every administration is bound by the laws that we in the U.S. Congress pass. It is incumbent on us as Members of Congress to understand the problem as it exists and to offer some realistic solutions as well. With that, I would like to recognize the distinguished member from Massachusetts, Ranking Member Lynch, for his opening statement.

[The prepared statement of Hon. Candice S. Miller follows:]

"Is the Federal Government Doing All it Can to Stem the Flow of Illegal Immigration?"

Opening Statement of Chairman Candice S. Miller

Committee on Government Reform
Subcommittee on Regulatory Affairs

Tuesday, July 25, 2006, 10:00 a.m.
2154 Rayburn House Office Building

Good morning. The Subcommittee on Regulatory Affairs will come to order. I would like to welcome everyone to our hearing today on the Federal Government's ability to enforce current immigration laws against employers who flout the law by employing illegal workers with impunity.

If law-makers are committed to stemming the tide of illegal immigrants across our borders, it is essential to enforce the laws against employing illegal aliens. It is the promise of these jobs that entices so many illegal aliens to leave their homeland and risk the perils of a border crossing. However, through generations of practice, they have learned that once in America they are home free. Many employers have also come to realize that no one is checking up on them. In some industries, this makes the lure of cheap illegal labor almost irresistible.

These immigrants and employers long ago figured out the sorry fact what we have only recently become aware of: the 1986 immigration law was designed to fail. The current system in place hampers the ability of the Federal Government to enforce immigration laws and crack down on employers who openly disregard the law.

Let me briefly detail some of the problematic provisions that currently prevent the Federal Government from being proactive:

1. With respect to documentation: There is a very low level of certainty that employee documents are valid because employers are forced to accept a diverse variety of identity and work authorization documentation.

- Unless a prospective employee's ID is obviously fake, the employer must accept it.
- These identification documents include school ID cards, Canadian Driver's licenses, school report cards, and day care or nursery school records!
- Additionally, the 1986 immigration law, IRCA, set the penalties for violating the law very low and the standard for proving a violation very high.
- There is no requirement that employers retain copies of the identification and work authorization documents they review or any subsequent documentation that they might receive that pertains to the work authorization of the individual.

This scheme not only makes the immigration laws difficult to enforce, it also provides a perverse incentive for the proliferation of fraudulent documents and identity theft.

2. **The current legal framework puts up firewalls between the Social Security Administration (SSA) and Department of Homeland Security that prohibit SSA from sharing actionable information about the most egregious violators of immigration law with The Immigration and Customs Enforcement the agency charged with enforcing the 1986 immigration law and the 1996 reform legislation.**

- SSA has a database called the Earning Suspense File (ESF) that could be used to crack down on employers who hire illegal workers. However, SSA has no authority to take action against the employer who submits wage reports that contain "no matches."
- Additionally, SSA interprets IRS Code, Title 26, § 6103, to prevent them from sharing information derived from wage reports with any other agency, absent explicit statutory authorization. ICE has indicated that access to some of this information would be a very valuable tool to help focus their enforcement activities.
- Meanwhile, the IRS is the only agency with both the W-2 information and enforcement capability, based on their authority to target individuals who submit fraudulent tax documents. Unfortunately, the IRS has decided as a matter of policy and priority to not pursue these violations.

3. **Finally, and most shocking, is that no government entity is charged with inspections of I-9 Forms, absent "reasonable suspicion" of wrongdoing.**

- DOL has authority to review I-9 documents, but I-9 inspections occur only as a tangential inquiry of a directed fair labor investigation.
- DHS also has authority to review I-9s, but must rely on tips. Denied access to the ESF, DHS has limited ability to target private sector employers who consistently violate the law.

To use a tongue in cheek example, this would be like asking American's to file their taxes in good faith with zero threat of IRS inspectors to check on their submissions. I have a suspicion that if we were to operate our tax collection in this manner, tax receipts would drop dramatically!

In summary, Congress devised a system that asks employers to be familiar with 30 plus obscure documents under penalty of law, but with a wink and a nod, declines to establish a system to verify compliance.

Let me be clear. The purpose of this hearing is not to blame the current administration- or the witnesses before us for this deficient system. Every Administration is bound by the laws that we, the U.S. Congress, pass. It is incumbent on Members of Congress to understand the problem as it exists and offer a realistic solution.

With that, I recognize the distinguished Member from Massachusetts; Ranking Member Lynch for his opening statement.

Mr. LYNCH. Thank you, Chairman Miller.

First of all, I want to thank the panelists who have come before us to testify. We have great coverage, Madam Chair, with this panel. I think we have every angle and every aspect of the problem that is before us covered by the expertise of the panelists, the IRS, the Department of Labor, Citizenship and Immigration Services and also Customs Enforcement.

Just for a little bit of background, before coming to Congress, I was an iron worker for about 18 years, strapped on a pair of work boots, went out there and did my job. I worked basically in the private sector, everything was by competitive bid. And it was a continuing frustration for me as a worker, as a manager on a construction project and also as a general foreman, to prepare bids in a competitive environment only to have our bids undercut by contractors who we knew, we knew were using illegal labor and not paying them the full wages.

So this is a competitiveness issue. While I certainly am understanding of our immigration problems in the United States, I also think we owe it to our citizens to give them a fair shake and have a full and fair opportunity to get good jobs and not have to compete on illegal lines. I hope that is the beginning of the job we are going to do here this morning.

As Congress continues to look at how our current immigration system can be improved, it is important that we keep in mind the need to protect the rights of workers who are authorized to work in the United States. It is important to create an atmosphere that encourages compliance with the law while at the same time ensuring that all authorized workers have a full and fair opportunity to work.

I am a firm believer that we have operated a system of open borders in this country for a very long time. I don't believe, as people say, that 10 million or 12 million people sneaked into America, sneaked into the United States; 12 million people don't sneak in anywhere. We operated with a system of open borders in this country for many years. We shouldn't be surprised that illegals came into this country. We also operated a system that allowed them to come and go to work here under, in many cases, very dubious circumstances.

Today's hearing will explore the current worker verification system. Under current law, our employers are required after hiring a worker to check the worker's Social Security number or other approved documents to verify the worker's identity and eligibility to work. Employers must then fill out a form certifying that the worker's documents have been reviewed and that they appear to be legitimate. Employees can voluntarily participate in the Social Security number verification system, which allows them to check employees' names and Social Security numbers against the Social Security Administration's numbers. This system allows employees to be more proactive in complying with the law.

One of the issues that we need to hear about, however, is whether it would be beneficial to increase the information about employers and employees that could be shared between the Social Security Administration, the IRS and the Department of Homeland Security. I hope that as part of the discussion, the witnesses here today

who have joined us will address some of the concerns that have been raised regarding these proposals. For example, the impact that sharing tax information would have on taxpayer privacy and how those concerns can be addressed.

I am also interested in hearing from the witnesses how, with the increased use of verification systems, we can protect against unfair and unlawful terminations when employees challenge "no match" results. In looking at employer verification requirements, we can't ignore one of the biggest problems with our current system: the administration's lax enforcement. The Washington Post reported on June 19, 2006, that between the years 1999 and 2003, worksite enforcement operations, this used to kill me in the field, trying to get somebody to go out there and inspect, you knew there were foreign workers, they had Canadian plates and we knew these workers who were coming over the border from Canada in New England.

The Washington Post reported that between 1999 and 2003 worksite enforcement operations were scaled back 95 percent. So while verbally we say we want to enforce it, we are doing 95 percent fewer inspections and fewer enforcement operations by the Immigration and Naturalization Service, now called U.S. Immigration and Customs Enforcement.

The number of employers prosecuted for unlawfully employing unauthorized immigrants dropped from 182 in 1999 to 4, 4 in 2003. Fines collected went from $3.6 million to $212,000. We just stopped doing it.

The Department of Homeland Security has increased enforcement efforts in recent months, but overall, as GAO reported last month, "Worksite enforcement has been a relatively low priority."

I hope to hear from the witnesses who are with us today from the Department of Homeland Security in terms of what is happening with enforcement. I want to thank you all again for coming here and for taking the time to help the committee with its work.

Madam Chair, I yield back. Thank you.

Mrs. MILLER. Thank you very much, Mr. Lynch.

Because we are an oversight committee with subpoena authority, it is the custom of the committee to swear in all of our witnesses. So if you will all please rise and raise your right hands.

[Witnesses sworn.]

Mrs. MILLER. Thank you very much.

Our first panelist today is Martin Gerry. He was appointed by President Bush as Deputy Commissioner of Social Security for Disability and Income Support Programs in 2001. Prior to assuming his current position, Mr. Gerry served as a research professor and director of the Center for the Study of Family, Neighborhood and Community Policy at the University of Kansas, where he was also a faculty member within the University schools of law and education.

Mr. Gerry, we appreciate your attendance here at the subcommittee, and look forward to your testimony.

STATEMENTS OF MARTIN H. GERRY, DEPUTY COMMISSIONER, OFFICE OF DISABILITY AND INCOME SECURITY PROGRAMS, SOCIAL SECURITY ADMINISTRATION; ALFRED B. ROBINSON, JR., ACTING ADMINISTRATOR, WAGE AND HOUR DIVISION, EMPLOYMENT STANDARDS ADMINISTRATION, U.S. DEPARTMENT OF LABOR; JANIS SPOSATO, ASSOCIATE DIRECTOR, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY; MATTHEW C. ALLEN, ACTING DEPUTY ASSISTANT DIRECTOR, SMUGGLING AND PUBLIC SAFETY DIVISION, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY; AND K. STEVEN BURGESS, DIRECTOR, EXAMINATIONS, SMALL BUSINESS/SELF EMPLOYED DIVISION, INTERNAL REVENUE SERVICE

STATEMENT OF MARTIN H. GERRY

Mr. GERRY. Madam Chair, Mr. Lynch and members of the subcommittee.

The President has proposed a comprehensive approach to immigration reform, one that works to better secure our borders, enforce worksite employment requirements and address the variety of economic issues related to immigration. This comprehensive approach calls for the creation of a true temporary worker program that allows individuals to achieve legal status by paying their taxes, learning English and gaining and sustaining employment in our society.

It is against that backdrop that I want to thank you for inviting me here today to talk about the wage reporting and Social Security number verification processes, the Earning Suspense File and no match letters that we issue, and the Non Work Alien File.

The Social Security Administration's role in the wage reporting process is to ensure that all workers receive credit for the work for which they and their employers paid Social Security taxes. Each year, the Social Security Administration processes approximately 235 million W–2s, from 6.6 million employers that are sent to us either electronically or on paper. Social Security records these earnings to each worker's account so that they are considered in determining eligibility for benefits, that would be retirement, disability benefits, survivors benefits, and the amount of benefits to be paid. This information is also passed on to the Internal Revenue Service for income tax purposes.

Social Security number verification is a key to ensuring that wage reports are properly matched to the right Social Security number. Over the years, we have developed three alternative methods for employers to verify Social Security numbers. In 2005, through a combination of these methods, we estimate that we provided a total of 67 million employer verifications. The employee verification service is a free, convenient way for employers to verify employee Social Security numbers. It provides employers with several options, depending on the number of Social Security numbers to be verified.

To further increase the ease and convenience of verifying employee Social Security numbers, we developed the Social Security Number Verification Service. After obtaining a PIN and password,

in a simple registration process, employers can use the Internet to get immediate verification of the accuracy of the employees' names and Social Security numbers.

Now, neither of these first two approaches deals with work authorization. I just want to make that clear. They are really ways for employers to be sure that they have a name and number match. Any employer in all 50 States, however, may participate in the Basic Pilot Program, an ongoing voluntary program in which the Social Security Administration supports the Department of Homeland Security in assisting employers who want to confirm employment eligibility for newly hired employees. The information the employer submits to the Department of Homeland Security is sent to Social Security to verify that the Social Security number, name and date of birth submitted matches information in Social Security Administration records.

The Social Security Administration also confirms U.S. citizenship, thereby confirming work authorization. The Department of Homeland Security confirms current work authorization for noncitizens. Then finally, the Department of Homeland Security notifies the employer of the employee's current work authorization status and whether the name and Social Security number match SSA's records.

As of July 2006, the Department of Homeland Security and Social Security have signed agreements with over 10,000 employers, and so far, for fiscal year 2006, the Social Security Administration is receiving an average of 150,000 Basic Pilot requests per month.

The Earnings Suspense File is an electronic holding file for wage items reported on forms W–2 that cannot be matched to the earnings records of individual workers. A mismatch occurs when Social Security cannot match the name and SSN on a W–2 to information in our records. If the Social Security Administration later resolves this mismatch, we can remove the item from the suspense file and credit the wages to the proper person's record.

While the Earnings Suspense File represents an accounting of unassociated wage items, the taxes on these wages have been paid and are credited to the trust funds. Each year, approximately 10 percent of the W–2s we receive, about 23.5 million, have invalid name and Social Security number combinations. Using computer routines, we subsequently are able to post more than half of these W–2s. These routines are basically computer tests which can tell whether there are some numbers reversed or there is some minor error that creates the initial problem.

By October 2005, if you looked at the 2003 data, so about a year and a half later, less than half these wage items initailly sent to the earnings suspense file are still there. Each year, 10 percent have an invalid name and Social Security number. The routines reduce that to less than 5 percent by October of the year after the year in which we actually process the data, so in 2005 we were down to 8.8 million or about 3.8 percent of all W–2's received. So we have gone from 10 percent, we then resolved more than half and we reduced to 3.6 percent.

And subsequent processing reduces this still further. To give you an example, for the 1995 year, today only 2.3 percent of the origi-

nal are unposted. So over time, we do resolve many of these mismatches.

It has been widely reported that most of the wage items in the Earnings Suspense File can be attributed to work by illegal aliens. We cannot determine the specific number of wage items that are attributable to earnings of individuals not authorized to work in the United States. And while some percentage of name and Social Security number mismatches are attributable to unauthorized workers, mismatches occur for a variety of other reasons, including typographical errors, unreported name changes and incomplete or blank Social Security numbers.

It is important to note that wage items that remain in the Earnings Suspense File include wages paid to individuals who were not and may not currently be authorized to work in the United States. These individuals have actually paid taxes into the Social Security Trust Fund and are unable to receive benefits.

In certain instances, when a Social Security number does not match the worker's name, the Social Security Administration notifies employers of this situation through what is commonly called a "no-match" letter. We send these letters to employers who submit more than 10 wage items when more than one-half of 1 percent of the items that they submit consist of a Social Security number and name combination that does not match. I said half a percent, it is 5 percent.

In 2005, we sent "no-match" letters to approximately 127,000 employers. The only source of information that Social Security receives about a taxpayer, employer and earnings is from tax related information on a W–2. We receive and process this information as an agent for the Internal Revenue Service. Use and disclosure of tax return information is governed by Section 6103 of the Internal Revenue Code. We currently have the authority to use this information only for the purpose of determining eligibility for and the amount of Social Security benefits.

The administration supports legislative proposals that would allow the disclosure of "no-match" data to the Department of Homeland Security in the interest of national security and for law enforcement purposes. Each year, Social Security reports to Congress the number of SSNs assigned to aliens who were not authorized to work in the United States when the card was issued for whom earings were reported. The most recent report that we submitted to Congress stated that earnings were credited to 522,403 individuals with those Social Security numbers.

It is important to know, however, that because the work authorization status of a non-citizen may change, an earnings report under a non-work Social Security number does not necessarily mean that unauthorized work was performed.

In conclusion, I want to say that the Social Security Administration strongly supports the President's comprehensive immigration reform approach and remains committed to ensuring that the American public's hard-earned wages are properly credited, so that they will be able to receive all the benefits to which they may be entitled.

Thank you for the opportunity to appear before the subcommittee, and I would be pleased to answer any questions you might have.

[The prepared statement of Mr. Gerry follows:]

Statement of Martin H. Gerry
Deputy Commissioner
Office of Disability and Income Security Programs
Social Security Administration
Before the House Committee on Government Reform
Subcommittee on Regulatory Affairs

"Is the Federal Government Doing all it can
To Stem the Tide of Illegal Immigration?"

July 25, 2006

The President has proposed a comprehensive approach to immigration reform that addresses the need to secure our borders, enforce worksite employment practices, and address the economic issues of immigration. This approach calls for the creation of a true temporary worker program that allows individuals to achieve legal status by paying their taxes, learning English and gaining employment in our society.

Thank you for inviting me here today to talk about Wage Reporting, the Earnings Suspense File (ESF), and the Non Work Alien File.

The Wage Reporting Process

Our role in the wage reporting process is to ensure that all workers receive credit for the work for which they and their employers paid Social Security taxes.

Employers report wages to the Social Security Administration (SSA) on Forms W-2 (Wage and Tax Statement). SSA processes the Form W-2 data for tax purposes for the Internal Revenue Service (IRS). Self-employed individuals report information on self-employment income to IRS on Schedule SE. IRS then sends this self-employment information to SSA, which uses the SSN to record employees' earnings.

Accurate earnings information is vitally important to our Agency's administration of the Social Security program because a worker's earnings record is the basis for computing retirement, survivors and disability benefits. If a worker's earnings are not properly recorded, he or she may not qualify for Social Security benefits or the benefit amount payable may be wrong.

Each year, SSA processes approximately 235 million W-2s from 6.6 million employers that are sent to the SSA either electronically, or on paper. Approximately 152 million wage earners work in jobs covered by Social Security, which means that many worked in more than one job during a year. While some employers continue to send us their reports on paper, we encourage electronic filing and work to educate employers on the advantages of this method. We expect the use of electronic filing to grow as technology improves. In fact, in FY 2005, 66 percent of W-2s were filed electronically, up from less than 10 percent in 1999. We believe the increase in electronic filing will reduce errors over time.

SSA also offers a suite of services called Business Services Online (BSO). BSO offers Internet services for businesses and employers who exchange information with Social Security. Available services for registered users include the ability to report W-2s via the internet.

As you know, SSA mails Social Security Statements to workers over age 25 each year (approximately 144 million in 2005). The Statement is a concise, easy-to-read personal record of the earnings on which the worker has paid Social Security taxes during his or her working years and a summary of the estimated benefits the individual and his/her family may receive as a result of those earnings. We encourage workers to review the Statement to ensure that the information in SSA's records is correct and to contact SSA to make any corrections.

Later in life, when a person files for benefits, an SSA employee reviews the earnings record with the worker and assists the worker to establish any earnings that are not shown or are not correctly posted. However, since it may be difficult for the worker to accurately recall past earnings or to obtain evidence of them, SSA strives to maintain accurate records at the time the wages are reported.

SSA's SSN Verification Processes

SSN verification is key to ensuring that wage reports are properly matched to the right SSN. Over the years, we have worked to offer employers alternative methods to verify SSNs. One of those methods is the Employee Verification Service (EVS). EVS is a free, convenient

way for employers to verify employee SSNs. It provides employers with several options depending on the number of SSNs to be verified. For up to five SSNs, employers can call SSA's toll-free number for employers (1-800-772-6270) weekdays from 7:00 a.m. to 7:00 p.m. Eastern Standard Time. Employers may also use this number to get answers to any questions they may have about EVS or other issues relating to employer reports. In FY 2005, SSA responded to nearly 1.5 million calls from employers.

Employers also have the option to submit a paper listing to the local Social Security office to verify up to 50 names and SSNs. In addition, employers may use a simple registration process to verify requests of more than 50 names and SSNs or for any number of requests submitted on magnetic media. Currently, almost 17,000 employers are registered for this verification service.

To further increase the ease and convenience of verifying employee SSNs, we developed the Social Security Number Verification Service (SSNVS). After obtaining a pin and password in a simple registration process, employers can use the internet to get immediate verification of the accuracy of employees' names and SSNs. This service was expanded to all employers in June 2005.

Commissioner Barnhart announced the nationwide rollout last year at the SSA- sponsored National Payroll Reporting Forum and we

continue to promote SSNVS. For example, an article on SSNVS appeared in the SSA/IRS Reporter that is sent to over 6.6 million employers. It was also featured in the SSA wage reporting email newsletter, W2News. We have also highlighted SSNVS in our many speaking engagements before the employer community. There is a special section on SSA's website for employers that highlights and explains the use of SSNVS. Our employer web site, which includes SSNVS access, has achieved a high satisfaction rating. Through SSNVS, we processed over 17 million verifications for 21,000 employers in the first six months of 2006.

Basic Pilot

In addition to EVS and SSNVS, employers may participate in the Basic Pilot program, an ongoing voluntary program in which SSA supports the Department of Homeland Security (DHS) in assisting employers to confirm employment eligibility for newly hired employees. Participating employers register with DHS to use this automated system to verify an employee's SSN and work authorization status. The information the employer submits to DHS is sent to SSA to verify that the Social Security number, name, and date of birth submitted match information in SSA records. SSA will also confirm United States citizenship, thereby confirming work authorization; DHS confirms current work authorization for non-citizens. DHS will notify the employer of the employee's current work authorization status and whether the name and SSN match SSA's

records. In December 2004 the Basic Pilot was expanded. It is now available to any employer in all 50 states who wishes to take advantage of this service. As of July 2006, DHS and SSA have signed agreements with over 10,000 employers, representing about 36,000 employer sites. For FY 2005, SSA received approximately 100,000 Basic Pilot queries each month. So far, for FY 2006, SSA is receiving an average of 150,000 Basic Pilot requests a month.

In 2005, through the EVS, SSNVS, and Basic Pilot programs, we estimate we provided a total of 67 million employer verifications, up from 62 million in 2004.

The Earnings Suspense File (ESF)

The ESF is an electronic holding file for wage items reported on Forms W-2 that cannot be matched to the earnings records of individual workers. A mismatch occurs when SSA cannot match the name and SSN on a W-2 to information in SSA's records. If SSA later resolves the mismatch, we can remove the item from the suspense file and credit the wages to that person's record.

Since the beginning of the program in 1937 and through Tax Year (TY) 2003, the most recent year for which data is available, the suspense file has grown and now contains about 255 million W-2s. While the suspense file represents an accounting of unassociated wage items, the taxes on these wages have been paid into the trust funds. In TY 2003, $7.2 billion

in payroll taxes were credited to the Trust Funds based on wage items placed in the suspense file. This represented approximately 1.3 percent of total payroll taxes credited to the Trust Funds.

In order for wages to be credited to the correct worker, the worker's name and SSN on the W-2 must match the name and SSN recorded on the master record of SSNs assigned, the "Numident" file. As discussed earlier, we receive about 235 million W-2 reports annually, representing reports from 6.6 million employers that total about $4 trillion in reported wages.

Ten percent of the W-2s received by SSA have invalid name and SSN combinations when they first come to us. In our initial processing, the computer system uses more than twenty automated routines to identify commonly occurring errors that, when corrected, enable the W-2 to be properly posted.

A number of these processing routines address discrepancies between the name reported on the W-2 and the name in SSA records. The reported SSN is screened for a variety of prescribed common mistakes, such as transposed digits, in an effort to obtain a match. Other, more complex, common problems cannot be corrected through these routines, and, in those cases, the earnings cannot be posted to a worker's account.

For TY 2003, using computer routines we were able to post more than half of all W-2s received with invalid name/SSN combinations to the correct SSN. The balance, 4.1 percent of total W-2s received for TY 2003, was initially recorded in the suspense file. As of October, 2005, approximately

8.8 million W-2s (3.5 percent of the total) representing $57.8 billion in wages remained in the suspense file for TY 2003.

It is important to note that wages that remain in the ESF include wages paid to individuals who were not and may not be currently authorized to work in the U.S. Thus, these individuals have actually paid into the Social Security Trust Fund and are unable to receive benefits.

Subsequent processing reduces this amount further. SSA removes wage items from the suspense file on an ongoing basis and posts them to the correct worker's record. Reinstatements can occur when a worker provides evidence of missing wages after reviewing the Security Statement. Over time, the percentage of W-2s for a given year or period of years that remain in the suspense file declines as a result of this subsequent processing. As an illustration, only 2.3 percent of all wage items for 1995 remain in the suspense file.

I would like to address several misconceptions surrounding SSNs and the composition of the ESF. First is the notion that SSA has assigned the SSN 000-00-0000 to hundreds of thousands of workers. In reality, Social Security has never assigned a social security number consisting of all zeroes to any person. 000-00-0000 is not a valid SSN and Social Security does not verify an all zero SSN. Second, many people believe that the use of all zero SSNs is growing. Actually, wage reports with all zero SSNs have declined dramatically over the past 20 years. For example, for Tax Year 1984 Social Security has approximately one million reports with an all zero

SSN, remaining in the ESF, In contrast, for Tax Year 2003, Social Security has approximately 200,000 reports with an all zero SSN in the ESF. Finally, it has been widely reported that most of the wage items in Social Security's ESF can be attributed to work by illegal aliens. Social Security cannot determine the number of wage items in the ESF attributable to earnings of individuals not authorized to work in the United States. SSA's source of information about earnings is the Form W-2, and there is no citizenship or immigration status information on that document. While some percentage of name and SSN mismatches are attributable to unauthorized workers, such mismatches can occur for a variety of other reasons, including typographical errors, unreported name changes, and incomplete or blank SSNs.

No-Match Letters

As I said earlier, SSA processes wages reported by employers on Forms W-2. We pass this information on to the Internal Revenue Service for income tax purposes, and we record the earnings to each worker's account so that they are considered in determining eligibility for benefits and the level of benefits to be paid. In certain instances when a Social Security number does not match that worker's name, SSA notifies employers of this situation through what is commonly called a 'no-match' letter. We send these letters to employers who submit more than 10 wage items when more than 0.5 percent of the items in a wage report consist of an SSN and name combination

does not match our records. The employer 'no-match' letters include a list of up to 500 SSNs submitted by the employer in wage items that SSA could not post to a worker's record. In 2005, we sent approximately 127,000 employers 'no-match' letters, which covered 7.3 million mismatched records. For privacy reasons, the letter lists only the SSNs, not the name/SSN combination.

The only source of information that SSA receives about a taxpayer's employer and earnings is from tax return information on the Form W-2. We receive and process this information as an agent for the Internal Revenue Service. Use of and disclosure of tax return information is governed by section 6103 of the Internal Revenue Code. SSA currently has the authority to use this information only for the purpose of determining eligibility for and the amount of Social Security benefits. The Administration supports allowing disclosure of this data in the interests of national security and for law enforcement purposes.

The Non Work Alien File

Each year as required by Section 414 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, P.L. 104-208, SSA reports to Congress the number W-2s received indicating earnings on an SSNs assigned to aliens who were not authorized to work in the United States when the card was issued. The most recent report stated that earnings were credited to 522,403 such SSNs. It is

important to note that since the work authorization status of a non-citizen may change, an earnings report under a nonwork SSN does not necessarily mean that unauthorized work was performed. It is also important to understand that, because the name and SSN on the report matches SSA's records, these earnings reports are not reflected in the ESF.

Conclusion

In closing, let me say again that SSA strongly supports the President's comprehensive immigration reform approach and remains committed to ensuring that the American public's hard-earned wages are properly credited so that they will be able to receive all of the benefits to which they may be entitled.

Thank you for the opportunity to appear before you, and I will be pleased to answer any questions you may have.

Mrs. MILLER. Thank you. We appreciate that.

Our next witness is Alfred Robinson, Jr., who was named the Acting Wage and Hour Administrator effective June 2004. The Wage and Hour Division of the Employment Standards Administration administers and enforces a variety of labor standards and statutes that are national in scope and that enhance the welfare and protect the rights of the Nation's workers. Prior to joining the U.S. Department of Labor, Mr. Robinson was a member of the South Carolina House of Representatives. And prior to serving in the General Assembly, he worked on the board of the South Carolina Jobs Economic Development Authority, where he focused on job creation and economic development.

Mr. Robinson, we appreciate your attendance here at the subcommittee and look forward to your testimony, sir.

STATEMENT OF ALFRED B. ROBINSON, JR.

Mr. ROBINSON. Thank you, Madam Chair, Ranking Member Lynch and members of the subcommittee.

I am pleased to appear before you today to discuss the activities of the Wage and Hour Division of the U.S. Department of Labor's Employment Standards Administration in support of the Department of Homeland Security's enforcement of the Employee Eligibility Verification provisions of the Immigration and Nationality Act. This enforcement is commonly called the I–9 process, after the form that employers must complete to document the verification of their workers' eligibility for employment.

Wage Hour's mission is to promote and achieve compliance with labor standards that protect and enhance the welfare of the Nation's work force. We are responsible for administering and enforcing some of the Nation's most comprehensive labor laws, in particular the Fair Labor Standards Act. It requires the payment of minimum wage and overtime.

The administration supports a comprehensive approach to immigration reform that includes securing our borders, worksite enforcement and a temporary worker program. We look forward to working with Congress as it considers a comprehensive approach to immigration reform that will enhance coordinated enforcement of the INA and U.S. labor laws to better protect U.S. workers.

Employment Standards and Homeland Security have sought to coordinate worksite enforcement activities and entered into a memorandum of understanding on November 28, 1998. It clarifies the enforcement roles and responsibilities of each agency. The MOU also promotes more effective and efficient use of agency resources, reduces duplication of effort and improves communication and appropriate coordination between the agencies.

Wage Hour and Office of Contract Compliance Programs are covered by the MOU. Wage Hour recently began working with Homeland Security to update the MOU. As Acting Administrator, I will focus my testimony on our agency's role in helping Homeland Security reduce the employment of unauthorized workers.

The MOU obligates Wage Hour's investigative staff to perform two activities to assist Homeland Security. First, during an onsite visit to an employer's premises, Wage Hour staff advises employers about their responsibilities to verify the employment eligibility of

potential employees, advises employers about the anti-discrimination provisions and provides employers with a copy of a Homeland Security publication on completing the I–9, as well as information from the Office of Special Counsel for Immigration-Related Unfair Employment Practices.

Second, Wage Hour inspects the I–9 forms. Wage Hour conducts such reviews of completed I–9 forms only in non-complaint investigations, so as to not discourage workers, regardless of their immigration status or that of their co-workers, from reporting potential violations of employment standards. In other words, these reviews are limited to investigations initiated by Wage and Hour.

Wage Hour's I–9 review is designed to identify potential violations for Homeland Security's enforcement action, based on a review of the face of the form. If a Wage Hour review discloses apparent serious violations, such as an employer's unwillingness to allow Wage Hour to complete the I–9 review, an employer's failure to maintain the I–9's or obvious fraud, such as entering a person's Social Security number with the same nine-digits, then the appropriate Homeland Security office is immediately advised, usually by phone.

Wage Hour investigators have no authority to issue an employer a warning notice or notice of intent to fine. Only Homeland Security can take appropriate enforcement action for an alleged violation of the employment eligibility verification provisions.

Under the MOU, Wage Hour investigators record the results of their review on an ESA 91 form, which is transmitted to Homeland Security when potential violations are disclosed. Wage and Hour refers suspected violations described above, as well as then non-serious violations, such as minor paperwork errors, to Homeland Security via the form. If there are no violations, then Wage Hour returns the form in the file.

In conclusion, the administration looks forward to working with Congress to enact a comprehensive immigration reform that includes securing our borders, worksite enforcement and a temporary worker program.

Thank you for inviting me, Madam Chair. This concludes my statement, and I will be pleased to respond to any questions from members of the subcommittee.

[The prepared statement of Mr. Robinson follows:]

STATEMENT OF
ALFRED B. ROBINSON, JR.
ACTING ADMINISTRATOR
WAGE AND HOUR DIVISION
EMPLOYMENT STANDARDS ADMINISTRATION
U.S. DEPARTMENT OF LABOR

BEFORE THE

SUBCOMMITTEE ON REGULATORY AFFAIRS
COMMITTEE ON GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES

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

July 25, 2006

Chairwoman Miller, Ranking Member Lynch and Members of the Subcommittee:

I am pleased to appear before you today to discuss Wage and Hour Division (WHD) activities in support of the Department of Homeland Security's (DHS) enforcement of the Employee Eligibility Verification provision of the Immigration and Nationality Act (INA). As you know, this enforcement is commonly called the I-9 process, after the form that employers must complete to document their verification of workers' eligibility for employment in this country.

The mission of the WHD of the U.S. Department of Labor's Employment Standards Administration (ESA) is to promote and achieve compliance with labor standards to protect and enhance the welfare of the Nation's workforce. WHD is responsible for administering and enforcing some of our nation's most comprehensive labor laws, in particular the Fair Labor Standards Act (FLSA), which requires the payment of minimum wage and overtime to all

covered, nonexempt workers in the U.S. The Administration supports a comprehensive approach to immigration reform that includes securing our borders, worksite enforcement, and a temporary worker program. We look forward to working with Congress as it considers a comprehensive approach to immigration reform that will enhance coordinated enforcement of the INA and U.S. labor laws to better protect U.S. workers.

Historically, ESA, the Immigration and Naturalization Service (INS), and now DHS, have sought to coordinate worksite enforcement activities. A November 28, 1998, Memorandum of Understanding (MOU) between the INS and ESA clarifies the enforcement roles and responsibilities of each agency in areas of shared authority. The MOU, which remains in effect between ESA and DHS, also promotes more effective and efficient use of agency resources, reduces duplication of effort, and improves communication and appropriate coordination between the agencies. ESA's WHD and Office of Federal Contract Compliance Programs are covered by the MOU. As Acting Administrator for WHD, I will focus my testimony today on my agency's role in helping DHS to reduce the employment of unauthorized workers in the U.S.

The INA provides DHS with the responsibility for investigating compliance with the I-9 requirements, assessing civil penalties and initiating appropriate legal proceedings. No such statutory authority with the I-9 is provided to the Department of Labor (DOL). However, from the inception of the I-9 requirements in 1986, and because ESA enforces other employment standards and worker protections under the INA such as the H-1B visa program, ESA has shared with INS, and now DHS, information concerning employers' compliance with I-9 requirements

and has helped educate employers on their compliance responsibilities with the INA. The purpose and scope of this cooperation and sharing of information is found in the 1998 MOU.

The MOU is designed to:

- Promote employment opportunities for, and in the interests of, authorized U.S. workers;
- Foster cooperation and coordination between DHS and ESA;
- Enhance worksite enforcement to reduce employment of unauthorized workers;
- Reduce an employer's economic incentive to employ unauthorized workers and increase an employer's compliance with minimum labor standards; and
- Assure that ESA will take no action that will compromise its ability to carry out its fundamental worker protection mission.

WHD recently began working with DHS to update the 1998 MOU.

WHD's primary responsibility is the effective enforcement of labor laws to ensure that all covered workers, irrespective of their immigration status, are afforded full benefits and protections. Labor law enforcement not only helps ensure fairness and acceptable workplace standards, but also helps foster a level competitive playing field for employers who seek to comply with the law. The INA provides only a limited role for DOL in reviewing the I-9 forms. As noted previously, only DHS has the authority to enforce the employer sanction provisions of the INA. These respective roles of DHS and DOL are reflected in the MOU.

The MOU obligates WHD's investigative staff to perform two activities to assist DHS in its enforcement of Section 274A of the INA. First, during any onsite visit to an employer's

premises, WHD's staff advises employers about their legal responsibilities to verify the employment eligibility of potential employees; advises employers about the anti-discrimination provisions of the INA; and provides employers with a copy of the DHS publication ***Handbook for Employers: Instructions for Completing the I-9*** and information from the Office of Special Counsel for Immigration-Related Unfair Employment Practices.

The second activity WHD performs is an inspection of the I-9 forms. WHD conducts such reviews of completed I-9 forms only in non-complaint-based investigations under the FLSA and other laws it enforces so as to not discourage workers, regardless of their immigration status or that of their co-workers, from reporting potential violations of employment standards. In other words, these reviews are limited to directed investigations that are initiated by WHD.

Under the MOU, WHD's I-9 review is designed to identify potential violations based on a review of the "face" of the form for potential DHS enforcement action. The review does not include related employee interviews or document verification because only DHS is authorized by statute to conduct such enforcement activity. If a WHD review discloses apparent, serious violations, such as an employer's unwillingness to allow WHD to complete an I-9 review, an employer's failure to maintain the I-9 forms, or obvious fraud, such as entering a person's social security number with the same nine numbers, then the appropriate DHS office is immediately advised (usually by phone) of a possible I-9 violation. WHD investigators do not notify the employer of the apparent violations, but only that the WHD I-9 review has been completed and that the results will be forwarded to DHS. WHD investigators have no authority to issue an employer a warning notice or Notice of Intent to Fine. Only DHS can take appropriate

enforcement action for an alleged violation of the employment eligibility verification provisions of the INA.

Under the MOU, WHD investigators record the results of their review on an ESA-91 form, which is transmitted to DHS when potential violations are disclosed. WHD refers suspected serious violations described above, as well as non-serious violations, such as minor paperwork errors, to DHS via an ESA-91 form. If the WHD review reveals no violation of the I-9 process, then that information is recorded on an ESA-91 form and maintained in WHD files.

Although WHD's role in the I-9 verification process is limited, it is an important role that seeks to increase employer compliance with I-9 requirements. Thank you for inviting me, Madam Chairwoman. As stated earlier, the Administration looks forward to working with Congress to enact comprehensive immigration reform that includes securing our borders, worksite enforcement, and a temporary worker program. That concludes my statement and I will be pleased to respond to questions from the Members of the Subcommittee.

Mrs. MILLER. Thank you. We appreciate that.

Our next panelist is Janis Sposato. She is the Associate Director for the National Security and Records Verification Directorate with the U.S. Citizenship and Immigration Service for the Department of Homeland Security. She is a career Senior Executive Service leader. She brings 31 years of Federal Government experience in a very large, complex organization. She is an attorney by profession and is highly focused on national security issues impacting U.S. citizenship and immigration service. She was a Deputy Associate Director, Domestic Operations Directorate, since the inception of USCIS in 2003, after assisting in the transition of several components of the legacy Immigration and Naturalization Service in 2002, to the Department of Homeland Security.

We appreciate your attendance at the subcommittee and look forward to your testimony, ma'am.

STATEMENT OF JANIS SPOSATO

Ms. SPOSATO. Good morning. Thank you for giving me the opportunity to talk with the subcommittee about what my agency, U.S. Citizenship and Immigration Services, can and is doing to stem the tide of illegal immigration.

USCIS is the part of Homeland Security that adjudicates applications for immigration benefits, and we maintain the immigration records. I am the Associate Director of USCIS for National Security and Records Verification. My office was created in February of this year by our Director, Emilio Gonzalez, for the express purpose of demonstrating the expanding contribution that USCIS makes to the integrity of the immigration system. Our employment verification program is an important part of our contribution to immigration integrity and it is the centerpiece of our efforts to discourage illegal immigration.

We all recognize that employment in the robust American economy is a strong magnet for illegal immigration. The USCIS employment verification program is a simple and straightforward way to make illegal employment in the United States substantially more difficult to obtain. It works like this: After hiring the new employee, the participating employer submits a query on the Internet to the USCIS employment verification Web site. The query provides the new employee's name, date of birth, Social Security number and whether the individual claims to be a U.S. citizen or a non-citizen who has authorization to work in the United States. For non-citizens, the employer also provides an immigration identifying number.

The employer receives a response online within seconds. In most cases, the response confirms the individual's employment eligibility and the verification process is complete. Behind the scenes, the system transmits the new hires information to the Social Security Administration NUMIDENT data base. In the case of non-citizens, the information is sent to a USCIS data base as well. That is all there is to the verification process in the vast majority of cases.

When the initial verification is not successful, the system issues a tentative non-confirmation to the employer and more work must be done. The employer must notify the employee of the tentative

non-confirmation and give him or her an opportunity to contest the finding within 8 business days.

While the process differs somewhat depending on whether the failure to confirm employment eligibility emanated from the Social Security or USCIS data base, in either case, a representative of the Government will work with the individual who contested the tentative non-confirmation to find and correct the reason for the discrepancy. Problems may be as simple as the failure of the Government data base to account for a change of name at the time of the marriage or a divorce.

Once the contesting individual provides the clarifying information, USCIS generally resolves its cases within 3 days. The process at Social Security is very similar.

Today, use of the USCIS employment verification program by employers is voluntary. The program began in 1997 as a tiny pilot. Over time, it has expanded to support employers in all 50 States. In the past 6 months, the program has grown to support an additional 200 employers per month. Yesterday, we had the pleasure of announcing that we passed the 10,000 mark with more than 10,000 employers enrolled in the program.

And we are not done. We have much more capacity and we are actively seeking new employers to join the program.

I want to take a moment to discuss the problem of fraud. We all know that no system is foolproof. On the other hand, when electronic verification from Government data bases is added to the presentation of documents at the work site, the use of counterfeit cards and identities becomes much more difficult. In order to be accepted, the counterfeits must now match the data in the Government computer system.

Beyond that, USCIS is exploring new and innovative ways to combat imposter fraud and if we receive our requested appropriation in fiscal year 2007, we will add monitoring and compliance activities to our program. Already, we work closely with ICE worksite enforcement and we look ahead to being able to make a larger and larger contribution to the administration's ongoing interior enforcement strategy.

We in USCIS are in a unique position to understand the importance of having a legal way for individuals to enter and work in the United States. Enforcement alone is not enough. That is why we and the President support comprehensive immigration reform that includes interior and border enforcement, in addition to a temporary worker program.

I thank the subcommittee for the opportunity to briefly describe our employment verification program, and I look forward to hearing your questions and comments.

[The prepared statement of Ms. Sposato follows:]

U.S. Citizenship and Immigration Services

STATEMENT

OF

JANIS SPOSATO
ASSOCIATE DIRECTOR
U.S. CITIZENSHIP AND IMMIGRATION SERVICES
U.S. DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING ON

"Is the Federal Government Doing all it Can to Stem the Tide of Illegal Immigration?"

BEFORE THE

HOUSE SUBCOMMITTEE ON REGULATORY AFFAIRS
COMMITTEE ON GOVERNMENT REFORM

July 25, 2006
10:00 AM
2154 Rayburn House Office Building

Madam Chairman, Ranking Member Lynch, and Members of the Subcommittee:

I. Introduction

I am honored to have this opportunity to talk with the Subcommittee about the U.S. Citizenship and Immigration Services' (USCIS) Basic Pilot Employment Verification Program (Basic Pilot), which provides information to participating employers about the work eligibility of their newly hired workers. I also will describe the agency's plans to improve and expand the Basic Pilot in preparation for a nationwide mandatory Employment Verification Program.

An Employment Verification Program is a critical step to improving worksite enforcement and directly supports the President's goal of achieving comprehensive immigration reform. In his speech to the U.S. Chamber of Commerce on June 1, President Bush endorsed the Basic Pilot as "a quick and practical way to verify Social Security numbers" that "gives employers confidence that their workers are legal, improves the accuracy of wage and tax reporting, and helps ensure that those who obey our laws are not undercut by illegal workers."

Clearly, if we are to control illegal immigration, we can't just focus on the border. Illegal immigrants are living and working in every state of the nation, and our solution must be just as comprehensive. We must make sure that our immigration laws are enforced in Michigan and Massachusetts and Georgia, not just along the southwest border. Today, an illegal immigrant with a fake ID and Social Security card can find work almost anywhere in the country without difficulty. It's the prospect of jobs that leads people to risk their lives crossing a hundred miles of desert or to spend years in the shadows, afraid to call the authorities when victimized by criminals or exploited by their boss.

That is why the Administration has proposed a comprehensive overhaul of the employment verification and employer sanctions program as part of the President's call for comprehensive immigration reform.

There is much we can do in advance of the enactment of comprehensive immigration reform. Here's what we are working on at USCIS to improve and expand the Basic Pilot:

- Ensuring that more aliens authorized to work have secure biometric cards.
- Accessing our card databases for verification of work authorization -- which will decrease the number of Basic Pilot queries that require a manual check.
- Streamlining the enrollment process for employers by making it completely electronic.
- Creating monitoring and compliance units that will search Basic Pilot and Employment Verification Program data for patterns to detect identification fraud and employer abuse.

The President's FY07 budget requests $110 million for expansion of the Basic Pilot to make it easier for employers to verify electronically the employment eligibility of workers. Based on our planning to date, we believe a feasible timetable allowing for phased-in expansion of mandatory verification along with flexible, user-friendly program requirements are essential to expand and operate the program as efficiently and effectively as possible.

We will also reach out to employers, including small businesses, for feedback and real-world input, such as ideas on the best ways to submit data on new hires with the least collective burden and how to make electronic employment verification as user-friendly as possible.

II. The Current Basic Pilot Program and Employment Verification Program

With that backdrop, I'd like to take this opportunity to outline how the current Basic Pilot works and the plans USCIS is putting in place to expand and improve it in preparation for a national mandatory program.

Congress established the Basic Pilot as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) in 1996, creating a program for verifying employment eligibility, at no charge to the employer, of both U.S. citizens and noncitizens. The Basic Pilot program began in 1997 as a voluntary program for employers in the five states with the largest immigrant populations -- California, Florida, Illinois, New York and Texas. In 1999, based on the needs of the meat-packing industry as identified through a cooperative program called Operation Vanguard, Nebraska was added to the list. The program was originally set to sunset in 2001, but Congress has twice extended it, most recently in 2003 extending its duration to 2008 and also ordering that it be made available in all 50 States. However, the program remains only voluntary, with very limited exceptions. A small percentage of U.S. employers participate, although the program is growing by about 200 employers a month to a current 10,000 agreements between USCIS and employers. These employers are verifying over a million new hires per year at more than 35,000 work sites.

We seek in operating the Basic Pilot program to encourage the voluntary participation of small businesses, and to be responsive to their needs and concerns. Most (87%) of our participating employers have 500 or fewer employees. Madam Chairman, in your state of Michigan, there are 168 participating employers, representing transportation, administrative and support services, food services, and plastics and rubber manufacturing industries. And Ranking Member Lynch, in Massachusetts, there are 335 participating employers, representing food services, government support, and retail businesses. We would welcome your support in reaching out to enroll even more employers in the program. Interested employers can register by going to our Basic Pilot Employer Registration Site at: https://www.vis-dhs.com/employerregistration.

How the Basic Pilot Works

After hiring a new employee, an employer submits a query including the employee's name, date of birth, Social Security account number (SSN) and whether the person claims to be a U.S. citizen or work-authorized noncitizen (for noncitizens, DHS issued identifying # is also submitted) and receives an initial verification response within seconds. For an employee claiming to be a U.S. citizen, the system transmits the new hire's SSN, name and date of birth to the Social Security Administration (SSA) to match that data, and SSA will confirm citizenship status on the basis of its Numident database. For the 88% of employees whose status can be immediately verified electronically, the process terminates here; in the remaining cases, the system issues a tentative nonconfirmation to the employer. The employer must notify the employee of the tentative nonconfirmation and give him or her an opportunity to contest that finding. If the employee contests the tentative nonconfirmation, he or she has eight days to visit an SSA office with the required documents to correct the SSA record.

Noncitizen employees face a more elaborate process. Once SSA verifies the name, date of birth, and SSN, the system will attempt to verify the person's work authorization status against the Basic Pilot database. (If a noncitizen's SSN information does not match, the individual is first referred to SSA) If the system cannot electronically verify the information, an Immigration Status Verifier will research the case, usually providing a response within one business day,[1] either verifying work authorization or, in 19 percent of cases, issuing a DHS tentative nonconfirmation. If the employer receives a tentative nonconfirmation, the employer must notify the employee and provide an opportunity to contest that finding. An employee has eight days to call a toll-free number to contest the finding and cannot be fired during that time because of the tentative nonconfirmation. Once the necessary information from the employee has been received, USCIS generally resolves the case within three business days,[2] by issuing either a verification of the employee's work authorization status or a DHS Final Nonconfirmation.

As you know, the House and Senate have both passed significant immigration legislation this Congress, including provisions that require a mandatory electronic employment eligibility verification program for all 7 million U.S. employers. Although the House and Senate provisions differ in some significant ways, both bills would require the eventual expansion to all U.S. employers of an Employment Verification Program generally modeled on the Basic Pilot.

USCIS is already planning for the expansion of the program. The President's FY07 budget request includes $110 million to begin expanding and improving the Basic Pilot, including conducting outreach, instituting systems monitoring, and compliance functions. USCIS is exploring ways to improve the completeness of the immigration data in the Basic Pilot database, including adding information about nonimmigrants who have extended or changed status and incorporating arrival information in real time from U.S. Customs and Border Protection. In addition, USCIS is enhancing the Basic Pilot system

[1] Statistics gathered from the Basic Pilot database, Oct. 1, 2005 to March 31, 2006.
[2] Ibid.

to allow an employer to query by the new hire's card number, when that worker has a secure I-551 ("green card") or secure Employment Authorization Document. This enhancement will improve USCIS' ability to verify promptly the employment eligibility of noncitizens because the system will validate the card number against the repository of information that was used to produce the card, thereby instantly verifying all legitimate card numbers.

Planned Monitoring and Compliance Functions

No electronic verification system is foolproof or can fully eliminate document fraud, identity theft, or intentional violation of the required procedures by employers for the purpose of hiring unauthorized persons or keeping them on the payroll. But an Employment Verification Program that includes all U.S. employers, along with monitoring and compliance functions and a fraud referral process for potential ICE Worksite Enforcement cases, can substantially deter and detect the use of fraud by both employers and employees as the Administration works to strengthen its overall interior enforcement strategy.

The current Basic Pilot is not fraud-proof and was not designed to detect identity fraud. In fact, a recent analysis of Basic Pilot systems data found multiple uses of certain I-94 numbers, A-numbers, and SSNs in patterns that could suggest fraud. As currently envisioned, the Employment Verification Program will include robust processes for monitoring and compliance that will help detect and deter the use of fraudulent documents, imposter fraud, and incorrect usage of the system by employers (intentionally and unintentionally). USCIS will forward enforcement leads to ICE Worksite Enforcement in accordance with referral procedures developed with ICE. The monitoring unit will scrutinize individual employers' use of the system and conduct trend analysis to detect potential fraud. Findings that are not likely to lead to enforcement action (e.g., a user has not completed training) will be referred to USCIS compliance officers for follow-up. Findings concerning potential fraud (e.g., SSNs being run multiple times in improbable patterns; employers not indicating what action they took after receiving a final nonconfirmation) 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 prosecuting fraud and identifying and removing criminal aliens and other threats to public safety or national security. It is also important that the system contain security and other protections to guard personal information from inappropriate disclosure or use, and to discourage use of the system to discriminate unlawfully or otherwise violate the civil rights of U.S. citizens or work-authorized noncitizens.

Planning for the Employment Verification Program

We are confident in our ability to get a substantially expanded Employment Verification Program operational with the President's budget request.

The Administration supports a phased-in Employment Verification Program implementation schedule on a carefully drawn timeframe to allow employers to begin using the system in an orderly and efficient way. We favor having the discretion to phase in certain industry employers ahead of others. As noted elsewhere in my testimony, USCIS already is working to improve and expand the Basic Pilot program to support the proposed expansion.

USCIS is also committed to constructing a system that responds quickly and accurately. In order for this system to work, it must be carefully implemented and cannot be burdened with extensive administrative and judicial review provisions that could effectively tie the system, and DHS, up in litigation for years.

III. Improved Documentation

In the President's May 15, 2006 address to the nation on comprehensive immigration reform, he indicated that businesses often cannot verify the legal status of their employees because of widespread document fraud. We need, he said, "a better system for verifying documents and work eligibility. A key part of that system should be a new identification card for every legal foreign worker. This card should use biometric technology...to make it tamper-proof. A tamper-proof card would help us enforce the law, and leave employers with no excuse for violating it."

Many foreign workers already possess a secure, biometric card evidencing their immigration status as either an immigrant (an I-551 card, commonly known as a "green card") or a work-authorized nonimmigrant (an Employment Authorization Document or EAD). Some nonimmigrants currently have non-secure EADs, but USCIS is planning to eliminate the issuance of these cards in favor of secure cards. In addition, USCIS is considering requiring more classes of work-authorized nonimmigrants to obtain a secure EAD. Requiring all work-authorized nonimmigrants to obtain secure documentation would help ensure that their work eligibility can be instantly verified in the Basic Pilot or Employment Verification Program. As I discussed previously, USCIS already is developing the system capability to verify a new hire's immigration card number against the card information repository. Under this new system, a legitimate card number matched with a name and date of birth will electronically verify in a matter of seconds – and only a fraudulent card would fail to verify.

IV. Conclusion

We in USCIS are in a unique position to understand the importance of having legal means for individuals to enter and work in the United States. 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 thank both the House and the Senate for recognizing the need for change in this area. With a strong cooperative effort now, the prospect of a truly effective national mandatory Employment Verification Program, combined with improved documentation, will reduce pressure on border and interior enforcement, simplify today's processes, put employers

on an equal footing, and support a temporary worker program that is vital to our economy.

Thank you and I look forward to answering your questions.

Mrs. MILLER. Thank you very much. We appreciate that.

Our next witness is Mr. Matt Allen. Mr. Allen is currently the Acting Deputy Assistant Director of the Smuggling and Public Safety Investigations Division of the U.S. Immigration and Customs Enforcement Agency. In this position, he has operational oversight of the contraband smuggling, human smuggling and trafficking, identity and benefit fraud, worksite enforcement, human rights violators and public safety, which is gangs, programs within the Office of Investigations. Prior to this assignment, Mr. Allen served as a unit chief for the Contraband Smuggling Unit at ICE headquarters. In that capacity, he had operational oversight of all of ICE's drug and contraband smuggling investigation throughout the United States.

We appreciate your attendance at the subcommittee, Mr. Allen, and look forward to your testimony, sir. The floor is yours.

STATEMENT OF MATTHEW C. ALLEN

Mr. ALLEN. Thank you, Chairwoman Miller and members of the subcommittee. Thank you for welcoming me here today to talk about U.S. Immigration and Custom Enforcement's efforts in worksite enforcement and how we are investigating and prosecuting employers that hire illegal aliens.

ICE's 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. ICE's 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.

As part of our strategy, ICE is focused on bringing criminal prosecutions and using asset forfeiture as tools against employers of illegal aliens. An example of our worksite efforts occurred in April 2006, when ICE conducted the large 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 work sites.

This coordinated enforcement operation also involved investigative agents and officers from the Department of Labor, the Social Security Administration, 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, as well as fraud and mis-use of immigration documents.

Our worksite enforcement efforts also include critical infrastructure protection. In June of this year, for example, an ICE investigation resulted in the apprehension of 55 illegal aliens working at a constructionsite at Dulles International Airport, just outside Washington, DC.

By carefully coordinating our detention and removal resources, and our investigative operations, ICE is able to not only target the organizations unlawfully employing illegal workers, but to detain and expeditiously remove the illegal workers that we encounter.

For example, in a recent case in Buffalo, NY, 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. Rather, they will be detained and promptly deported.

What impact will this have? Criminally charging employers who hire undocumented aliens and rapidly removing illegal workers that are encountered 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 them 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 Web site 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 Myers announced the creation of ICE-led Document and Benefit Fraud Task Forces in 11 major metropolitan areas. The DBF task forces are built on strong partnerships with USCIS, the Social Security Administration, the 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 or other criminals to integrate into our society undetected.

While ICE has made substantial improvements in the way that we investigate and enforce worksite, DHS also 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. The administration has sought the authority to have additional access to the 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 from multiple employees on the same Social Security number and are therefore more likely to be engaging in unlawful behavior.

Additionally, provisions in current legislative proposals regarding document retention by employers 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.

Although criminal prosecution of egregious violators is our primary objective in worksite cases, a need also exists for a new and improved process for 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 the issuance of meaningful penalties. The administration has proposed a streamlined administrative fines and penalties process that gives the Secretary the authority to administer and adjudicate fines and 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 the smuggling that gets illegal aliens to the United States.

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

ICE is dedicated and committed to this mission, and 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.

[The prepared statement of Mr. Allen follows:]

STATEMENT

OF

MATTHEW C. ALLEN
ACTING DEPUTY ASSISTANT DIRECTOR
SMUGGLING AND PUBLIC SAFETY DIVISION
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
U.S. DEPARTMENT OF HOMELAND SECURITY

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

Tuesday, July 25, 2006 @ 10:00 AM
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.

Mrs. MILLER. Thank you. We appreciate that very much.

Our final witness today is Mr. Steve Burgess. He is the Director of Examinations for the Small Business/Self Employed Division of the Internal Revenue Service. As the Director of Examinations, he oversees all compliance policy and audit activities dealing with small business and self-employed taxpayers in the Nation. Prior to this assignment, he served as the Acting Director of Reporting Enforcement and was also responsible for policy issues related to abusive tax avoidance transactions, anti-money laundering and the fraud program.

Mr. Burgess, we welcome you to the subcommittee and look forward to your testimony, sir.

STATEMENT OF K. STEVEN BURGESS

Mr. BURGESS. Good morning, Madam Chairwoman Miller, Ranking Member Lynch and members of the subcommittee.

I am pleased this morning to discuss the Internal Revenue Service's limited role in the immigration debate. Comprehensive immigration reform, including enhanced border security, robust interior enforcement and temporary worker program is top administration priority. Perhaps the most difficult part of this issue is framing it properly and understanding fully the different yet sometimes complementary roles provided by the Social Security Administration, the U.S. Department of Homeland Security and the Internal Revenue Service.

My written statement attempts to do that, as well as walk through our role, both in identifying instances where mismatches between employee names and Social Security numbers occur, as well as our enforcement authority against employers. The most critical point to keep in mind from an IRS perspective is that our role is tax collection and administration. We want to make sure that everyone who earns income within our borders pays the proper amount of taxes, even if they may not be working here legally.

If someone is working without authorization in this country, he or she is not absolved of tax liability. Instead of using a Social Security number to file a tax return, that person frequently uses an individual taxpayer identification number, or what we call an I–10. For tax year 2004, at least 2.5 million returns were filed by aliens using an I–10. These 2.5 million returns voluntarily reported taxes of over $5 billion. More than 2.3 million of them include income from salaries and wages.

Under current law, the burden of preventing illegal aliens from working in this country falls on employers. When they are hired, an employee is charged with completing two documents which demonstrate their ability to work in this country. The first is an I–9, which is required by the Department of Homeland Security. It is to be completed and kept on file by the employer. The second is the W–4 form, an IRS form on which the employee designates the number of deductions that should be made from his or her salary.

Both forms request, among other things, the Social Security number of the employee. However, there is no requirement that the employer verify the information that the prospective employees provide. If the employee provides an inaccurate number, it will first be discovered when the employer submits the W–2 form to the So-

cial Security Administration at the end of the year. The Social Security Administration will discover that the numbers do not match any of the information in their data base. After attempting to identify why the name and numbers do not match, the Social Security Administration will eventually send a letter to both the employee and the employer, asking that the correct number be submitted.

Social Security Administration, however, has no enforcement authority in this area. The IRS has enforcement power, but this is not an area in which we would normally initiate an examination. Rather, this is an issue that we would review as party of a general employment tax audit.

There are several problems with this issue from an enforcement perspective. The cases in this population tend to have very low audit potential. The wages from mismatched W–2s are generally very low. In 2004, the average wage reported for mismatched W–2s was under $7,000.

We have also found that employers that have high W–2 mismatch rates generally do not always have corresponding problems with fulfilling their employment tax obligations. Perhaps the most significant is that employers can generally demonstrate that they have requested a valid Social Security number and had reasonable cause to believe that the Social Security number that was given was accurate.

I will conclude by repeating the need for comprehensive immigration reform, but I urge that any changes in the current system encourage the type of behavior that is both desired from both employees and employers. We recognize the positive benefits of comprehensive reform for tax administration. For example, the creation of a temporary worker program, will likely result in additional taxpayers entering the system.

However, failure to enact comprehensive immigration reform could have negative consequences for tax administrations if procedures are imposed on employers and employees that have the effect of driving certain economic activities underground.

Thank you for inviting me to testify this morning. I will be happy to take any questions you may have.

[The prepared statement of Mr. Burgess follows:]

WRITTEN TESTIMONY OF
K. STEVEN BURGESS
DIRECTOR, EXAMINATIONS
SMALL BUSINESS/SELF EMPLOYED DIVISION
INTERNAL REVENUE SERVICE
BEFORE
HOUSE COMMITTEE ON GOVERNMENT REFORM'S
SUBCOMMITTEE ON REGULATORY AFFAIRS
ON
IS THE FEDERAL GOVERNMENT DOING ALL IT CAN TO STEM THE TIDE OF ILLEGAL IMMIGRATION
JULY 25, 2006

Introduction

Madam Chairwoman Miller, Ranking Member Lynch, and Members of the Subcommittee, thank you for the opportunity to appear before you this morning.

I understand the focus of today's hearing is whether the Federal Government is doing all it can to stem the tide of illegal employment of aliens. I am pleased to discuss the IRS' limited role in this area.

Framing the Issues

Perhaps the most difficult part of these issues is framing them properly and understanding fully the different, yet sometimes complementary, roles performed by the Social Security Administration (SSA), the U.S. Department of Homeland Security (DHS), and the Internal Revenue Service (IRS).

We at the IRS support and appreciate the jobs being done at SSA in maintaining and protecting the Social Security Trust Funds and at DHS in enforcing our immigration laws, but our function is tax administration. Our job is to make sure that everyone who earns income within our borders pays the proper amount of taxes, even if they may not be working here legally. If someone is working without authorization in this country, he/she is not absolved of tax liability. Instead of an SSN to file a tax return, that person frequently uses an Individual Taxpayer Identification Number (ITIN).

An ITIN is a tax processing number issued by the IRS. It is a nine-digit number that always begins with the number 9 and has a 7 or 8 in the fourth digit, example 9XX-7X-XXXX.

IRS issues ITINs to individuals who are required to have a U.S. taxpayer identification number but who do not have, and are not eligible for a Social Security Number (SSN).

ITINs are issued regardless of immigration status because both resident and nonresident aliens may have U.S. tax return and payment responsibilities under the Internal Revenue Code. For example, a non-resident alien may have U.S. source income that is subject to U.S. tax. This often occurs in accordance with the provisions of a Tax Treaty.

It is important to understand that strictly from the standpoint of tax administration, the ITIN program is bringing taxpayers into the system. Thus far in calendar year 2006, we have received 1.6 million applications for ITINs, up 25 percent from this time last year.

We estimate that for tax periods 1996 to 2003 that the tax liability for ITIN filers totaled almost $50 billion.

Comprehensive immigration reform --- including enhanced border security, robust interior enforcement, and a temporary worker program --- is a top Administration priority. The Administration believes that worksite enforcement is critical to the success of immigration reform. Further, as immigration laws are enforced, the Administration believes that comprehensive immigration reform also requires us to improve those laws by creating a temporary worker program that rejects amnesty and relieves pressure on the border. We also recognize the positive benefits for tax administration. For example, the creation of a temporary worker program will likely result in additional taxpayers entering the system.

IRS's Role in the Mismatch Program

Each year, employers send their W-2s and W-3s to the SSA by February 28 (or March 31 if filed electronically). The SSA processes the forms and then attempts to reconcile any mismatches. They then send the information to IRS on a weekly basis. IRS culls out any unusable records, as well as any W-2s that are not related to the current tax year. For Tax Year (TY) 2004, the resulting IRS file contained more than 231 million W-2s from the SSA. This represents a decline of approximately 6.5 percent from the corresponding file for TY 2000.

Of the 231 million W-2s in IRS's TY 2004 file, approximately 223 million had matching names and SSNs. Some of these matches resulted from the SSA's successful use of techniques for resolving mismatches. For the balance of approximately 8 million TY 2004 W-2s for which there was no valid match, IRS used several additional methods to match the numbers. We were able to match approximately 60,000 more names with SSNs, about 7.9 million W-2s where there is no valid name and SSN match.

To help correct SSN mismatches, the SSA sends letters to employers, employees and self employed individuals asking that they take steps to match the names with the SSNs. These letters do not go to all employers. These letters go only to certain employers. First, letters are sent to employers who submit a wage report containing more than 10 Forms W-2 that SSA cannot process. In addition, employers who file more than 2200 W-2's, more than one-half of one percent (1/2 percent) of which represents mismatched forms, also receive the letters. In TY 03, the SSA sent over 121,000 such letters to

employers, inquiring about 7.2 million invalid W-2s. No letter was sent to the employers of the other 0.7 million mismatches

There are two interesting aspects to the data on mismatches. The first is geographical. Over 50 percent of the mismatches are found in four states, California, Texas, Florida and Illinois. California has the far greatest number of mismatches totaling nearly 2.3 million, or approximately 29 percent of the mismatch total.

The second is economic. Based on IRS' own analysis, about 75 percent of all mismatched W-2s report wages of less than $10,000. If we focus only on those mismatched W-2s with no withholding, the percentage increases to 90 percent. Only about 2 percent of all W-2s with invalid SSNs report wages greater than $30,000. In fact, the average wage for all mismatches is only about $6700 annually. Bear in mind, that many employees receive more than one W-2 in a tax year, so these numbers may not reflect an individual's gross income.

From a tax administration perspective, we know that for TY 2004 there were approximately $53 billion in wages reported on W-2s with invalid Social Security Numbers, with about a quarter of that amount, or $13.3 billion, on W-2s with no withholding. About 56 percent of the $53 billion came from W-2s reporting wages between $10,000 and $30,000.

On the high end, only about 1 percent of the wages ($0.5B) were reported on mismatched W-2s showing wages in excess of $100,000. Thus, we can conclude that W-2 mismatches represent the lowest wage earners who probably have little or no tax liability.

Legal Requirements for Employers

It is important to point out that the SSA has no enforcement power and cannot impose penalties on employers for failure to correct SSN mismatches. IRS, however, does have enforcement power and can assess penalties. Therefore, it might be helpful if I walk you through our current legal authority.

Under section 6041 and 6011 of the Internal Revenue Code (IRC) employers and other payors must include correct SSNs or Taxpayer Identification Numbers (TINs) on Forms W-2 reporting wages or salaries paid to employees.

Under section 6721, we may impose a $50 penalty on an employer for each W-2 or 1099 that omits or includes an inaccurate SSN/TIN unless the filer (employer, other payor, etc.) shows reasonable cause for the omission or inaccuracy. The maximum penalty for any employer or payor in a calendar year is $250,000. If the violation is deemed to be willful, the fine is the greater of $100 or 10 percent of the unreported amount per violation with no maximum.

From a tax compliance perspective, violations of these provisions are generally identified as part of an overall employment tax examination. We would not ordinarily initiate an

examination against an employer solely on the basis that he/she had reported a high number of mismatches. This is a function of both resources, and the fact that the employer can easily demonstrate that he/she has performed the due diligence required under the law.

Specifically, Section 6109 places the burden on the employee or the payee to provide the employer or payor with an accurate SSN or TIN. This is an important distinction because the employer can have any penalty imposed for failing to include an accurate SSN or TIN on the return abated, if the employer made an initial and, if necessary, annual request that the payee provide an accurate SSN/TIN. He can also have the penalty abated if he establishes that due diligence was otherwise used, such as by obtaining a statement from the employee under penalties of perjury that the SSN or TIN is accurate.

As you can see, what is important here is that the employer or payor makes a request, or repeats a request, for an accurate SSN or TIN. If the employer does, he/she has performed due diligence and has reasonable cause to believe the SSN or TIN is correct. Because this due diligence standard is so easy for employers to meet, it has been virtually impossible to sustain, under section 6724, a penalty assessed against an employer under section 6721.

Conclusions

We continue to consider ways to improve the current system and stand ready to work with our colleagues at SSA and DHS in any manner we can. In addition, we would, of course, work to execute any changes Congress determines to bring into effect. Comprehensive immigration reform can have positive affects on tax administration. For example, the creation of a temporary worker program will likely result in additional taxpayers entering the system.

We would, however, call two issues to your attention that could be problematic with certain changes in the current regime.

First, any significant change requiring improved information sharing between Federal agencies or between Federal agencies and employers must account for protections found in section 6103 of the Internal Revenue Code. This section protects taxpayers from having their tax return information shared with third parties.

Second, we must make sure that any change in the current system encourages the type of behavior that we desire from both employees and employers. Failure to enact comprehensive reform could have negative consequences for tax administration if procedures are imposed on employers and employees that have the effect of driving certain economic activities "underground". At least now we are collecting some taxes in these areas and we are working to collect even more.

Thank you for inviting me to testify this morning. I will be happy to take any questions you may have.

Mrs. MILLER. Thank you very much.

Where to start, I guess, we certainly had a lot of very, very interesting testimony.

I sit on the House Armed Services Committee as well. It was interesting listening to the 9/11 Commission really identify what a big problem that our Nation had and continues to have is the inability of various agencies to share information. I think a lot of what we heard here today points to a continuation of that. So I am hoping that this hearing will allow us to understand how we in the Congress can assist the various agencies.

One of the acts that we have recently passed in an effort to help us with illegal immigration, as well as homeland security, is something called the Real I.D. Act. This of course is a piece of legislation that will require all the States, as they are using their breeder identification documents, to issue either a driver's license or State identification card, to be able to verify who these individuals are. We saw the horrific attacks on our Nation of September 11th. Literally you had all except one of the murderers who had valid driver's licenses. Mohamed Atta had a visa that had been expired for 6 or 7 months and still had a valid driver's license. It is the foundation, I think, to your identity.

I am also aware that the States, in addition to the driver's licenses, and I will address this question to Mr. Gerry, because of the Welfare Reform Act, trying to get deadbeat parents as they go from State to State, when you get a driver's license you have to verify now, I believe every Secretary of State or DMV or whatever in the Nation has to verify the Social Security number of that individual who is applying for a driver's license or State identification card.

I am just wondering, because everything that we are talking about today focuses on the veracity and integrity of your data base and the verification for Social Security numbers, how is that working amongst the States? I am assuming it is the same process as is being utilized by the employers. Maybe you could explain that to us.

Mr. GERRY. I am trying to figure out which question to address first. We do in fact operate through a hub, which is set up between the Social Security Administration and AAMVA, which is the American Association of State Motor Vehicle Administration. We do verify for driver license purposes.

What we actually do is match names and numbers. We go through a procedure that is quite similar to what we would go through with respect to, remember I mentioned three different verification systems we use, well, really the two that don't involve work authorization, where we are just looking at whether the name and number match. And as far as I know, I would be happy to supplement this for the record, that has been working quite successfully. We have a longstanding working relationship with AAMVA.

But that process does not ger involved with this whole question of work authorization and immigration to the same extent as the Basic Pilot process. So in that sense, it is somewhat different.

Mrs. MILLER. I was trying to take some notes when you were speaking there, you were talking about the three methods. I think you said there were 67 million verifications. Then you explained a

little bit about how the employers got the PIN and the password to use the Internet.

But yet in the pilot program as well, I believe that the percentage of employers who are actually participating in that currently is less than one-tenth of 1 percent nationally.

Mr. GERRY. I think my testimony was there were 6.6 million employers, and I think we just said we went over 10,000. I can't do the math in my head, but that sounds like a reasonable calculation. It is a small percentage of all employers that are participating in the Basic Pilot.

Mrs. MILLER. Less than small.

Mr. GERRY. It is a growing, but small percentage.

Mrs. MILLER. Could you tell us a little bit about your reasoning behind your determination that you are unable to share the information in the ESF with the Department of Homeland Security as well?

Mr. GERRY. Well, basically the question of what information we can share, tax-related documents, is primarily a question, of course, for the Secretary of the Treasury, for the Internal Revenue Service. Because Section 6103 of the Internal Revenue Code lays out the conditions under which this information can be shared. We of course look to the Department of Treasury with respect to what the meaning of that statute is and the regulations that are issued.

The longstanding understanding that we have from the Department of Treasury and that we have relied on is that, as I testified earlier, we may only use the tax-related information for purposes directly related to our programs, the operation of our programs and the determination of benefit amounts. So in that sense, any information that we have that is tax-related, that would be right now the only purpose for which we could use it.

The one very limited circumstance which is slightly outside of that is certain circumstances where the Inspector General of the Social Security Administration has initiated an investigation, often in conjunction with the Department of Homeland Security. At that point, we can in fact make that information available. But that is far along in the investigation and prosecution process.

So we do share in those very limited circumstances data that would be covered by Section 6103. But otherwise, we are under this general restriction on the use of that data.

Mrs. MILLER. I appreciate that. I see my counsel taking some notes here for possible legislation I think to assist you with that. Since we talked a little bit about the IRS, Mr. Gerry put you on the seat there as well, let me direct a question to our individual from the IRS. Have you been working with the Social Security Administration as well as ICE in order to promote the information sharing within the bounds of the law with this ESF? And perhaps as a followup question as well, you mentioned that the mission of the IRS is to collect taxes. I was a former county treasurer, so I have that, right? Through Biblical times, even, the tax collectors were always the most hated people. Regardless that is our mission.

What about all of these employers who are using as a corporate deduction the amount of compensation that they are paying to illegal aliens? What about legislation that would remove them, I don't know if this is something you want to opine on, but I am sort of

thinking out loud now, what about removing that from their corporate deduction? We have to have some penalties in order for people to comply with this. I think that would be a way. I don't know if you have any opinion on that.

Mr. BURGESS. Actually, Madam Chair, that would be in terms of consideration from Treasury, which would obviously require legislation. I guess maybe to indirectly answer, but if I was looking in terms of additional penalties and that sort of thing, to drive, it still roots back to some of the basic problems in terms of what information is provided to that employer. Unless there is a significant change in legislation as to what information is provided, as I testified right now, if someone provides evidence of a Social Security number and that is an accurate number, and signs that under penalties of perjury, it absolves the employer of responsibility to exercise reasonable care.

So even in terms of looking at additional legislation, that is something we would have to be mindful of in terms of, it wouldn't solve the problem.

Mrs. MILLER. Thank you.

Mr. Lynch.

Mr. LYNCH. Mr. Allen, I appreciate your testimony this morning. I want to go over the enforcement end of this that you are involved with. We just had a troubling incident up in the Boston area where one of our employers, it was actually an enforcement action that was conducted at an LNG facility in Boston, which is right beside a very large oil and petrochemical facility. So we have LNG, we have LNG tankers, we have LNG liquified natural gas and we have a massive petroleum product depot.

Inside the facility, we basically apprehended 16 illegal aliens working for one of the contractors there. This is a facility that is critical infrastructure with respect to homeland security. Yet I also read the Washington Post from last month where onsite inspections have been scaled back 95 percent between 1999 and 2003, this is after September 11th, continued to drop. The number of employers prosecuted for unlawfully employing unauthorized immigrants dropped from 182, which isn't a lot, figuring, as Mr. Gerry said, we have 6.6 million employers, we actually prosecuted 182 of those in 1999. Then that number has reduced to four. We actually prosecuted four, four companies for illegal employment of unauthorized immigrants.

It just doesn't read well with what your earlier testimony was that we are trying to reduce duplication of services and trying to work smarter and trying to get this job done. It seems like not only have we reduced duplication of services, we have reduced everything, down to basically zero. I know it is not your fault, but I am just trying to figure out how are we going to get our arms around this problem if we are not more aggressive than what we are? This is basically, we are doing nothing at this point, from what I can see.

Mr. ALLEN. Let me start with your last point first, and that is, how do we get our arms around this problem. I think the consistent theme that we have put forward this morning is that the answer to this is comprehensive. As the chairwoman pointed out in her opening remarks, this is a situation that we have found ourselves

in over the course of virtually two decades. We are not going to arrest our way out of it. It is virtually impossible, and none of the agencies sitting at this table are resourced to go out and arrest 12 million people to resolve the issue that way.

Mr. LYNCH. Nor do we want you to. But we do have some leverage with employers to help us police this whole process. It is going to require a collaboration. I think there is a way out of this, but it doesn't look like we are taking any meaningful steps.

Mr. ALLEN. I hope that my testimony pointed out that there has been a shift in strategy. I think the shift has been away from administrative worksite enforcement, which I think also in the last two decades has kind of illustrated that it hasn't been the kind of deterrent that we would want, to a focus on the two pillars that you pointed out and started with. And that is critical infrastructure, in light of September 11th and in light of the 9/11 Commission report, recognizing that access to critical infrastructure is the key, and that our first pillar has to be focused on removing that access and working with employers to make sure that they self-police. Many of the operations that we do at critical infrastructure sites are done in collaboration with employers who want to make sure that their work force is secure and that we remove access to people who should not be in the United States, first of all, and shouldn't be in critical infrastructure in the second place.

Then the second part of our strategy really does focus on that criminality. Those employers, who as part of their business model structure, work in such a way that they virtually knowingly hire unauthorized workers. By focusing on those two pillars, we take care of critical infrastructure on the one hand and focus on criminality and those who really build their business model on the other hand, and criminalize that activity.

Mr. LYNCH. OK, thank you.

Mr. Gerry, if I could just touch on a point that Madam Chair was hitting on earlier, about the sharing of information and the sensitivity of that. We heard that we have in many instances illegal immigrants who are working here who are actually filing these I–10's. So they are getting employer i.d. numbers, they are paying taxes. But I think what might be happening here is, we have no way of verifying if the number of deductions that they are claiming is valid.

So while we are saying, yes, they paid X number of dollars in taxes, it is probably very likely that they are claiming in their W–4E, which is exempt, or W–4 with 25 deductions. So we are getting very little of what we should be getting in terms of the proper tax load. I am just wondering, how do we get at that problem? Because without sharing that information, we understand you are trying to be respectful of that division of authority, we would have to have you go onto these jobs sites under the guise of enforcing the proper tax load on those individuals. Instead of asking Mr. Allen and his group to go in with ICE and under a straight immigration protocol, we are asking you to go in to enforce the tax laws.

So we have to sort of collaborate here. I think we have the right group here. We just have to figure out who is going to do what.

Mr. GERRY. I think amongst us you have the right group. I think our problem in the I–10 situation is we might well have no infor-

mation whatsoever. This is a person who is not enumerated by us. It is possible that they could have dependents who are enumerated by us, but it would be total speculation at this point.

The restriction on sharing of tax-related information of course doesn't apply to the Internal Revenue Service. It is in fact their role. So any information that we have that is tax-related, of course they have complete access to.

So I understand the problem that you are posing is probably really a better problem for the IRS to talk about. I think right now, I don't see any immediate barriers to our working with the Treasury on this. It would depend on whether we had data whether it was not tax-related and whether there are regulatory projibitions on sharing it. One question is to the privacy of that data. But I don't know that comes up in this case.

Mr. LYNCH. Madam Chair, I asked the wrong person. Could I have Mr. Burgess——

Mrs. MILLER. The time has expired, and we do have a couple of Members who do have to leave. There will be a second round of questioning.

Mrs. Schmidt.

Mrs. SCHMIDT. Thank you.

I am going to direct two questions to Mr. Allen. The first one is regarding ICE and the training of locals. In the surrounding district, Sheriff Jones in Butler County has really come to the scene in the greater Cincinnati market, saying that he would like to be able to go in and collect illegals and put them in jail; but he lacks the authority. His complaint is that ICE can't train his folks to do it in a timely manner. He has been told that it is anywhere from 6 to 18 months to train his officials to do that.

Is that a valid statement or not?

Mr. ALLEN. I will answer briefly, and then we can talk offline or I can take one for the record if you want. ICE has a very robust 287(g) program, which you are talking about, which is the mechanism that we have under the INA to train State and locals to perform immigration functions. We have been working aggressively to try and identify State and local agencies to work with us cooperatively. I would say that our focus right now is on the southwest border. Six to 18 months sounds like something that I am going to have to check on and find out if that is a real time line. I don't have oversight of that division of the Office of Investigations. So I will have to get back to you whether or not that is an accurate time line for training in your area.

Mrs. SCHMIDT. OK, thank you. Second, and I wasn't going to bring this up, but you have it in your testimony on page 7, and it is regarding the Fischer Homes issue. I don't know how to delicately talk about this. In the United States, we are innocent until proven guilty. Mr. Fischer does not live in my district, he lives in Kentucky. I represent Ohio.

But a few weeks ago, he came to my office with tears in his eyes over the heavy-handedness that the Federal Government is applying to him regarding Richard Pratt. He shared with me all of the documents that the Federal Government had laid on his table. He was there with his attorney.

What I saw in it was a statement by the Federal Government saying that if he admitted to culpability and paid $1 million, things would go away. But if he didn't, they were threatening to seize all of his assets until such time it would be demonstrated whether he had culpability or not.

That was troubling to me, because I don't know whether Mr. Fischer is innocent or guilty. But what worries me is, if the Federal Government comes in to someone that is innocent and puts liens on all of his homes that he can't sell, in essence, that individual is going to go broke. And if he is innocent, then the blame is on us.

I am sure you may not know all of the issue here today. But I did read those documents and I read them very, very carefully. And they were from the Federal Government. And it indeed troubled me.

I also want to add, Mr. Fisher asked me to do nothing on his behalf, which is why I never contacted your agency or any other agency. All he wanted to show me was the heavy-handedness of the Federal Government, so that I could be aware for the future. So again, Mr. Fischer asked me to say nothing or to do nothing. And I wouldn't have said anything today except on page 7 you talk about this issue. So I am bringing it to your attention that whether he is guilty or not, from what I saw from the documents that he gave to me, the Federal Government is assuming guilt, which I don't think we do in our Constitution.

Mr. ALLEN. Thank you. At the risk of appearing to dodge it, I will defer perhaps to the Department of Justice who, based on your description, probably is the author of those documents. That case is ongoing and I believe there are negotiations between the Federal Government and the defendants in the case.

Mrs. MILLER. Mr. Bilbray.

Mr. BILBRAY. Thank you, Madam Chair. First of all, I would like to thank you for allowing me to participate on the panel.

Ladies and gentlemen, before you really is the answer to illegal immigration. Mr. Allen, in all fairness, it is not border patrolmen at the border. Interior enforcement is obviously where we have the missing line.

Mr. Gerry, I appreciate that you bring up the fact that you have laws that don't allow you to share information. I think all of us have read the September 11th report. The 9/11 Commission specifically said, September 11th happened because we had so many firewalls that were developed after the Watergate period that agencies couldn't communicate.

I think, Madam Chair, our goal should be right now in Government Reform to destroy these firewalls and allow the communication so the American people can be protected.

Mr. Allen, I have to apologize to you right off, because you are, to a large degree, going to be the focus of my wrath today. How old were you in 1986?

Mr. ALLEN. I was 21 years old.

Mr. BILBRAY. Twenty-one. Well, let me remind you that in 1986 we did pass what was called comprehensive. And part of that comprehensive plan that was implemented was the amnesty program.

What wasn't implemented, obviously, from the records, was workplace enforcement. 1986 caused the greatest influx of illegal immigration that we have ever seen in this republic. In fact, as somebody who grew up and lives down south along the border, you can set your watch by every time somebody in the administration talks about comprehensive, because the flow of illegal immigration pours across the border, because they hear amnesty.

Now, my concern is that when we talk about what to do about the 12 million that are here is that we don't cause another 30 million to come because they see that they were fools to wait to immigrate legally. There is one gaping hole that we have in the system, and I need you to give us the answer. That is, we haven't been doing interior enforcement. I want to ask you, why can't my border patrol agents, who have checkpoints north of my district, south of my district, east of my district, cannot leave my district, leave my county without going through border patrol agents.

But the same border patrol agents are specifically told they cannot go to my Home Depot and check illegal aliens. Why is there a gag rule on my uniformed officers in San Diego County?

Mr. ALLEN. Speaking on behalf of ICE, and not being the organization that CBP border patrol agents work for, I will have to defer to CBP on that policy question. But obviously, focus on worksite is what we are here to do. I can't answer on behalf of CBP.

Mr. BILBRAY. OK. In all fairness, I think that I would just ask that we look at the fact that any time someone, Madam Chair, talks about sending more agents to the border, as somebody at the border, I would say, send them to Tennessee, send them to Kentucky, send them to the interior, send them to Alexandria, so that we can start doing enforcement.

Mr. Gerry, in 1937, is that when our Social Security card was developed?

Mr. GERRY. Approximately, yes.

Mr. BILBRAY. Every driver's license in America was a name and a number on a piece of paper, right?

Mr. GERRY. I think so.

Mr. BILBRAY. How many States have that kind of i.d. for their driver's license today?

Mr. GERRY. A piece of paper—I don't know the answer. I have a license, I have had licenses in Texas, Kansas and Maryland in the last 15, 20 years, and I haven't seen anything on paper.

Mr. BILBRAY. It is a pretty good guess that all the States have left that system? Is there any possibility we may be able to work between the administration and this legislature to upgrade our Social Security card to reflect the real i.d. standards that we have set on driver's licenses?

Mr. GERRY. Actually, Congress passed requirements which asked the agency to develop, with respect to the bank note paper requirements, a new approach to try to secure the card. The Commissioner has recently forwarded to the Congress a report that outlines several different things that could be done to dramatically improve security of the bank note card. That is what the statute that governs us right now requires.

And we haven't really gone beyond that because the SSN card is not an identification document. However, the President talking

about the whole question of immigration has talked about a biometric card for foreign job applicants, which I think by its very definition would have to be something other than a paper, bank note card.

Mr. BILBRAY. That is where it gets down to your work and Mr. Burgess' work. An employer right now is required to get a Social Security number from an employee?

Mr. BURGESS. Yes, Congressman. They are required to ask for an accurate Social Security number provided by the employee.

Mr. BILBRAY. But we really don't have a true tamper-resistant document, so that the employer could see that the number actually, have justifiable cause that the number applies to the person that is standing before them, asking for a job? Either one of you guys.

Mr. GERRY. That is correct.

Mr. BURGESS. Yes, sir, that is correct.

Mr. BILBRAY. So what we have is that the Federal Government has never done with its Social Security card what we are requiring States under the Real I.D. bill to do with all driver's licenses and all i.ds? Is that fair to say?

Mr. GERRY. I think it is fair to say.

Mr. BILBRAY. I would ask, Mr. Burgess, when we were talking about the tax issue, how many taxpayers, do we know how much money is paid out without using Social Security numbers, using the tax i.d. number?

Mr. BURGESS. In terms of the mis-match fund, Congressman?

Mr. BILBRAY. No, I am talking about the use of those tax, not just mis-match, but also those who are using the tax i.d. number in lieu of the Social Security number.

Mr. BURGESS. The I–10, the taxpayer identification number? Actually, the $5 billion that I referred to was the net in terms of, obviously those individuals, some individuals may have received refunds. Obviously even someone that is here illegally that is filing a return would be entitled to deductions. However, they would not be entitled to earned income tax credit.

Mr. BILBRAY. Why would they not be?

Mr. BURGESS. They specifically by statute do not qualify. You would need to be a citizen. But as far as the other deductions in terms of deductions for exemptions other items, they would qualify for and have claimed on returns.

Mrs. MILLER. The gentleman's time has expired, if I could interrupt. There will be a second round of questioning.

At this time I would like to call on Ms. Foxx.

Ms. FOXX. Thank you, Madam Chairwoman.

I too am bothered by this constant use of the term failure to enact comprehensive immigration reform. That seems to be the answer that all of you have.

I would like to ask Mr. Allen a question. Tell me exactly what you mean in using that phrase, "by establishing a temporary worker program as part of a comprehensive immigration reform." What is that program going to look like?

Mr. ALLEN. Well, ICE in all likelihood would not administer the program. It would be administered by CIS and other parts of the Department.

Our vision for a temporary worker program is an opportunity to do something that is very important. I think it has been pointed out a couple of times during the discussion this morning. And that is to bring in people from the shadows, and identify people who are in the United States, get them identified and have an ability to know who is actually in our country. Once they are identified, allow them to work in jobs that are available and that are not currently being worked by U.S. citizens. In other words, fill jobs that are currently not filled by our citizens.

Ms. FOXX. How is that different from the temporary worker programs that we already have? Don't we already have a lot of temporary worker programs? Tell me what is new about what you are talking about. You are talking about establishing a temporary worker program for illegals. I want to know, what is that, what do you mean by a temporary worker program?

Ms. SPOSATO. Congresswoman, if it is all right, I will try to take that, because it is my part of the Department of Homeland Security that would administer such a program. I would like to go back to your slightly earlier question about how would the temporary worker program differ from the employment based programs that we administer today. And I think the answer to that is, not necessarily in substantial ways, but when the administration expresses its desire and openness for a temporary worker program, it is looking to manage the 12 million or so people who we believe to be in the United States in the shadows, and to give them an opportunity to come forward and be employed in positions that are not occupied by U.S. workers.

Ms. FOXX. So are you saying then you would simply expand the existing temporary worker programs that we have by 12 million, if that is what it needs to be? And do you assume that all 12 million of those people are currently working?

Ms. SPOSATO. I can't say that the number of qualifying individuals would be 12 million. But I believe the administration has expressed an openness to various kinds of programs that the Congress might propose, and the Senate has proposed a program. The administration is willing to work with the Congress to develop the best program that can be put in place.

Ms. FOXX. I have one more question. I would like to get a copy of the training manual that you use for local people, local law enforcement people, to come up to the standards that ICE has set. I want to see all of the manuals or the outlines, the syllabus, whatever you have that you use that you say people have to adhere to in order to be qualified to do what ICE says they have to do.

Then I want to see the comparable material that you use for your own officers to say that they meet the standards to be enforcement officers. I would like to see those. And I would like to see them fairly soon. I don't want to wait 6 or 8 months to get them. I am assuming that they exist and that it shouldn't be any problem to get a copy of them. I would like to see them right away, because I would like to review them.

Mr. ALLEN. I will certainly take that for the record. The only thing I would point out right up front is that the training course, the 287(g) training course is about a 5-week course that we teach to State and local officers. I believe our special agent training right

now is in the range of 27 weeks at the Federal Law Enforcement Training Center. And they are different courses, they teach completely different skill sets; immigration authority being one subset of the skills that we teach our investigators.

Ms. FOXX. What does the length of the program have to do with my request?

Mr. ALLEN. I don't think it did.

Ms. FOXX. Thank you.

Mrs. MILLER. Thank you. I am one of these who really does believe that we have to have a comprehensive approach to immigration reform and to assisting all the agencies to enforce our current laws, etc. I will tell you I just came back from a very eye-opening trip for me, over the weekend, to our southern border.

We were in Yuma watching the Kentucky National Guard actually there build a wall. We were down in Nogales with some of the ICE agents and the Customs and Border Protection, looking at the processing centers there with hundreds and hundreds of illegals that they had just picked up that night, as well as the drugs. There was marijuana about to the ceiling of this room. It was unbelievable, the amount of drug interdiction that is happening as the National Guard is now able to supplement the work for the Customs and Border as well. And in El Paso, looking at some of the different things that are happening there.

I do think we need a comprehensive. I mean, you have to have a wall, perhaps, you need to be able to utilize technology. You need to have additional resources. You need to have judges and attorneys that can adjudicate the system so that we can stop this catch and release, etc. A big part of why we are having this hearing here today is so we can understand again what tools we need to give the various agencies in the Federal Government to dis-incentivize employers from hiring known illegal aliens. I just want to read off the Social Security Administration's Web site under Employer Reporting Instructions and Information, I just thought this was interesting.

"Do not use any of this information, essentially, to take punitive action against an employee whose name and Social Security number do not match Social Security's records. A mismatch does not make any statement about an employee's immigration status, is not a basis in and of itself for taking adverse action against the employee." Here is the kicker. "Doing so could subject you to anti-discrimination or labor law sanctions."

In other words, don't do anything with this information or you are going to really be in trouble. So again, the purpose of this hearing is, how can we assist all of you. I want to focus my final question here, on the I–9 form, the employment eligibility verification form. Ms. Sposato, I think you were mentioning in your testimony, you said it was a very simple and straightforward process that we are attempting to do with employers to make sure that they can understand the process.

But so far, as we understand it, you have not issued a final rule which would align the I–9 verification documents with the 1996 amendments. I am wondering, what is the plan of your agency to do so, and does it require legislation or can you promulgate a rule?

What is the delay and is that a dis-incentive to employers who are trying to understand the bureaucratic maze of paperwork?

Ms. SPOSATO. Madam Chair, that is a great question. As I mentioned in my oral statement, my organization came to being in February. So I really can't speak to why something hasn't happened previously. But I can tell you that I agree with you completely that the I–9 form and process needs to be simplified. I do have staff working on it and I have a pledge from my colleague here in ICE that they will work with us to simplify the form, reducing the number of documents that may be presented to employers.

Combined with mandatory employment verification through data bases, I think that will be a tremendous advance in stemming illegal immigration.

Mrs. MILLER. Even though you are not able to answer my question here today, obviously, about promulgating a rule, or passing a final rule, the committee is interested in knowing what the time line is from your agency on that. If you could get back to us on that, I would appreciate that.

Ms. SPOSATO. I will do that.

Mrs. MILLER. If I could, to the Department of Labor, Mr. Robinson, again on this I–9 form, and I think you testified, I was trying to take some notes during your testimony, that the Department of Labor has no authority to issue employers a violation, even after you might have determined that a violation of immigration laws has occurred. Are your field officers trained to detect fraud? How are they determining that a violation has occurred? Are they trained to detect fraud, for instance, on these I–9 forms? Do they know it when they see it?

Mr. ROBINSON. Madam Chair, the review that our field officers and investigators do is a review of the face of the form. So they look for irregularities, refusals, numbers that might be the same, things of that nature. That is what they report. As part of what we do train our employers, our investigators, they do those through training, but we try to be, if you will, eyes, and then we use that to report to Homeland Security.

Mrs. MILLER. So you don't have the authority to issue a violation. Would it be helpful, would it assist you if you did have such authority, rather than transferring that information to another agency? And when you do so, do you even followup to see what has happened with that?

Mr. ROBINSON. Well, Madam Chair, I think our No. 1 priority is to make sure that, for example, the Fair Labor Standards Act is enforced correctly. I think that is something that Congress should evaluate and debate. As we noted earlier, we report these types of violations to Homeland Security, which has been the enforcer, if you will, under the INA. But I think that is something that the administration would enter into debate as well as discussions with Congress, to determine what would be the best appropriate program.

Mrs. MILLER. OK. It is interesting, every one of you obviously has a mission. Yours is the Fair Labor Standards, yours is to collect taxes, etc. But before we do all these things, we are still Americans and we need to enforce the law. And we need to give you the

tools to assist to break down these silos. I think that is something that is really becoming very clear to the committee today.

Mr. Lynch.

Mr. LYNCH. Thank you, Madam Chair.

Let me just join the chorus here in calling for a comprehensive immigration bill. I personally think that we have so inflated that political football that I don't hold much hope for it. Maybe after elections are over, maybe cooler heads prevail and common sense comes to pass on a lot of people, and we can do something. I really recognize the need for immigration. This country's demand for engineers and scientists and our future is tied directly to our immigration policy, not to mention that it says a lot about what our country has become and who we will be in the future.

I think we need an immigration bill that is not Mexico-centric. I think it needs to recognize the global need for immigration to this country. And I think we need to have a deliberate, cogent, and workable system that doesn't frustrate people who would genuinely love to be U.S. citizens and who abide by the law and want to come here and work hard and take part in the American dream. Like I say, how we solve those problems says a lot about who we will be in the future.

But putting that aside for a moment, I want to go back to Mr. Burgess if I could. Let me summarize what I had asked before of Mr. Gerry. Do you think it is possible to increase the flow of information from the Social Security Administration, from the IRS as well, to the Department of Homeland Security, but at the same time respecting taxpayers' privacy. Is there a way to enhance what we are doing right now without going over the line that apparently has been drawn?

Mr. BURGESS. Congressman, the problem I see right now in reference to Code Section 6103 is that, in my opinion, it would actually take an amendment of that section to provide an exception. It does govern, it is obviously there to protect taxpayer privacy of their tax-related data. It is a fundamental foundation of our tax system.

So I believe that it would actually take an amendment of that particular Code section.

Mr. LYNCH. All right. Thank you, Mr. Burgess.

Mrs. MILLER. Mr. Bilbray.

Mr. BILBRAY. Thank you very much, Madam Chair.

Mr. Burgess, that whole privacy thing sort of struck me hard, because I was required, the State of California demanded that I show my tax return to be able to get in-State tuition for my children. I just wonder where the privacy issue is there, when you have to give that kind of document to be able to justify basically a taxpayer's right.

I would like an answer from the two ends on one issue. I think from the hearings that we have had, let me just first off really congratulate the ranking member. I appreciate his attitude about this whole issue. But one of the things that has really come down from the hearings is this lack of not crackingdown on illegal immigration, but the lack of real, substantial crackdown on illegal employment. One of the basic issues that keeps being raised by the business community is the 1986 law. When it came to enforcement, it

had things like the civil rights issues and the discrimination issues, almost to the point where you don't do it.

H.R. 98, which really needs work, I think Democrats and Republicans can meet and agree on something, and that is, let's make it so simple for an employer to know who is qualified to work here and who is not that there is no excuse to hire somebody who isn't. And H.R. 98 is a bill by Chairman Dreier and Silvestre Reyes of Texas that basically says, let's upgrade the Social Security card to a tamper-resistant document like our driver's license. That and only that would be the document that you would check to get the Social Security number you require.

Has the Social Security Administration taken a position on H.R. 98 yet?

Mr. GERRY. No, Mr. Bilbray, we haven't. Obviously the focus, and we have been working on this with IRS and DHS, has been the immigration issue. Of course, H.R. 98, as you are describing it, would go well beyond that. I testified before the Senate Judiciary Committee where we had members who were interested in a question of estimates of cost if we were to have a hard or tamper-resistant card. So we have provided some testimony with respect to what we think it would cost for the agency to do that. But we have not looked at the question as a policy matter or provided any kind of an answer.

Mr. BILBRAY. Although, you are aware that their bill only requires new hirees to get the document.

Mr. Burgess, one of the things I saw when I was a tax consultant, my family still runs the business, and we don't talk about this now, is the stealing of identification by illegals by using Social Security numbers. When an auditor tells you, Mr. Jones, you have three jobs that you haven't disclosed, and you have to prove that somehow an illegal got there, wouldn't the fact that if we simplify it to where, when an employer gets a number they get it off a tamper-resistant card, rather than just taking the word of somebody? Has your department taken a look at that at all, or do you have a position on H.R. 98? Or do you personally have an opinion about that kind of approach?

Mr. BURGESS. Congressman, I would defer that to Treasury. I can speak to the fact in terms of, as I have indicated in my testimony, one of the problems that we have had in terms of enforcing penalties for inaccurate numbers is the fact that the employer relies on information that is furnished by the employee.

Mr. BILBRAY. OK. Mr. Allen, I want to ask you a question about your guest worker program. Your guest worker program is being supported by the administration. Who would qualify to get into that guest worker program?

Mr. ALLEN. I think as I testified before, it is not ICE's program, we would not administer it. I will defer to CIS on what the criteria would be.

Mr. BILBRAY. Anybody from the administration, anybody from the administration, who qualifies under this guest worker program?

Ms. SPOSATO. I believe that the administration has asked the Congress to propose a guest worker program. The only proposal that I am aware of is the Senate bill. That proposal, at the risk

of summarizing it incompletely or inaccurately, I believe it allows people who have been in the United States for a certain amount of time to apply for and be granted guest worker status if they pass security checks.

Mr. BILBRAY. When you said then, are you talking about legal or are you talking about illegally in the country for a certain amount of time?

Ms. SPOSATO. I believe that the Senate proposal covers people regardless of whether their status in the United States today is legal or illegal.

Mr. BILBRAY. OK. Would somebody who is not in the United States, who has never entered the United States, would they be allowed to participate in that program?

Ms. SPOSATO. I believe that is also a part of the Senate bill.

Mr. BILBRAY. And who would have priority over, what would you do with the illegals who are here now? Where do they stand in this program?

Ms. SPOSATO. Again, I am a little bit reluctant to be precise, because I am not that familiar with the ins and outs of the bill. But I believe that if the person who is in the United States today illegally has been here for a specified amount of time they are allowed to a qualify for the——

Mr. BILBRAY. My question is, if you have never been here legally, how do you qualify for the 2-years to 5 years of being here?

Ms. SPOSATO. Under that bill, as I understand it, it is physical presence, not legal presence, that matters.

Mr. BILBRAY. So what you are telling me is that those who are waiting in other countries with applications to emigrate, or to try to get a work card, they would not qualify under this guest worker program, but somebody who has violated our immigration laws for 5 years would qualify under the program?

Mr. GERRY. Let me just clarify. What we are talking about is a Senate bill. I am looking at a document issued by the White House Office of Communications on June 1st in which the President outlines his principles for what a guest worker program would be. And they are inconsistent with what we are now talking about.

Mr. BILBRAY. Right. And that is what I want to clarify. Because the President supported the House bill strongly before it was passed. And now the Senate is proposing a bill that would allow somebody who is illegally in the country to have access to a guest worker program that those who have never violated our immigration laws would not qualify for, which really violates the original context that we never allow, the administration said we do not allow those who are illegally here to move ahead of those who have applied.

We have almost 100 million people that would one way or the other love to emigrate here. Then we end up with this conflict. So I just wanted to clarify that, because it is a very important message, not only to those who are illegally in this country, but those who are outside the country, listening to this debate. Because right now what they are saying down in Guahaca is, my cousin who broke the law is going to qualify for a program that I am not going to qualify for, because I didn't break the law. That is a very strong message.

Mr. GERRY. If you would like, I can read from this.

Mr. BILBRAY. Go ahead.

Mr. GERRY. I am just reading from the President. This is the White House Office of Communications, June 1st. "A temporary worker program would create a legal path for foreign workers to enter our country in an orderly way for a limited period of time." That is the first statement. Then below that, "The President believes illegal immigrants who have roots in our country and want to stay," so that is the second group of people, "should have to pay a meaningful penalty for breaking the law, pay their taxes, learn English and work in a job a number of years. People who meet these conditions should eventually be permitted to apply for citizenship like other foreign workers, but approval would not be automatic and they will have to wait in line behind those who played by the rules and followed the law."

Mr. BILBRAY. OK, that is the catch word, Mr. Gerry.

Madam Chair, we have to clarify. This country takes almost a million legal immigrants a year, more than the rest of the world combined. And the fact is, Mr. Gerry, in reality, if you put them behind everyone who is playing by the rules, they will never enter this country, because we never take everyone who is applying.

So that word about putting them behind, if it is truly the intent of the legislation, then you have to say that in reality, we are never going to process them, because we have those who are playing by the rules who will never get through the system themselves.

Mr. GERRY. I just want to clarify, I am not speculating on the intent of the legislation. I am just talking about what the President has laid out as the administration's view of what the legislation should include.

Mrs. MILLER. I appreciate that, and I am going to say that the gentleman's time has expired. And I am going to conclude the hearing as well, because we have another subcommittee that wants to use this room here shortly. But we certainly, on behalf of the entire committee, appreciate all of the witnesses coming here today.

Obviously the issue of illegal immigration is a very emotional one for every American. It is a very complicated issue as well. When you see the House and the Senate at loggerheads over various aspects of their individual bills, in all the different nuances within that, it is a very difficult issue as the Congress is reflective, I think, of what is happening nationally with the electorate. And it is not going to go away after the election, no matter what happens.

So that again was the purpose of this hearing today. I think the committee got a lot of good information about possible opportunities that we have again to assist the various agencies to enforce current laws, regardless of what happens, whether or not we pass any further immigration legislation. What we have currently on the books, I think we have a huge amount of opportunity to do the right thing for our Nation as well.

With that, again, we appreciate all of the witnesses' attendance today.

Mr. BILBRAY. Madam Chair.

Mrs. MILLER. Mr. Bilbray.

Mr. BILBRAY. I would just like to thank you again for allowing me to participate, and I would like to compliment Mr. Allen. He looks much younger than he really is. [Laughter.]

Mrs. MILLER. Thank you very much.

With that, the committee will be adjourned.

[Whereupon, at 11:40 a.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]

INSERT FOR THE RECORD, PAGE 43, LINE 928

This supplement for the record relates to the question from Chairperson Miller about SSA's verification system for State motor vehicle agencies: "How is it working and is it the same process used by employers?"

SSA provides two different Social Security number verification processes that can be used by State motor vehicle agencies. One is a batch system in which the Department of Motor Vehicles (DMV) periodically sends a list of SSNs to be verified and SSA replies in two or three business days.

The other process, to which Chairperson Miller was referring, is a real-time system that SSA provides to the DMVs through the American Association of Motor Vehicle Administrators (AAMVA). In the motor vehicle community this system is known as SSOLV, or Social Security Number Online Verification. This system is working very well and is being used by 45 States and the District of Columbia. It is similar to SSA's employer verification systems in that it is a match of certain identifying information, and does not provide work authorization or alien status. In fiscal year 2005, SSA processed over 21.5 million requests for the motor vehicle agencies.

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