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ILLEGAL ALIENS

Significant Obstacles to Reducing Unauthorized Alien Employment Exist

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ILLEGAL ALIENS: Significant Obstacles to Reducing Unauthorized Alien Employment Exist

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the Immigration and Naturalization Service's (INS) enforcement of workplace immigration laws. My statement will outline the results presented in our recently completed report, Illegal Aliens: Significant Obstacles to Reducing Unauthorized Alien Employment Exist (GAO/GGD-99-33, April 2, 1999).

One of the primary magnets attracting illegal aliens to the United States is jobs. Immigration experts believe that as long as opportunities for employment exist, the incentive to enter the United States illegally will persist, and efforts at the U.S. borders to prevent illegal entry will be undermined. Therefore, these experts believe that reducing the availability of employment for illegal aliens should be an integral part of a comprehensive strategy to reduce illegal immigration.

In this statement, I make the following points:

- Significant numbers of aliens unauthorized to work in the United States have used fraudulent documents to circumvent the employment verification process designed to prevent employers from hiring them, thereby undermining the effectiveness of the process. Employers seeking to comply with the law can be deceived by fraudulent documents, while those seeking "cheap labor" can intentionally hire unauthorized aliens under the guise of having complied with the employment verification requirements.

- INS has taken steps to improve the employment verification process, yet considerable obstacles remain.

- INS and the Department of Labor's immigration-related worksite enforcement efforts have been limited, and INS' employer investigation efforts have produced modest results.

- INS is changing its approach to worksite enforcement, but it is too early to gauge its success.

We made recommendations in our report that are shown at the end of this statement.

Background

The Immigration Reform and Control Act (IRCA) of 1986[1] made it illegal for employers knowingly to hire unauthorized aliens. IRCA requires employers to comply with an employment verification process intended to provide them with a means to avoid hiring unauthorized aliens. The process requires newly hired employees to present a document or documents that establish their identity and eligibility to work. Employers are to review the document or documents that an employee presents and complete an Employment Eligibility Form, INS Form I-9. On the form, employers are to certify that they have reviewed the documents and that the documents appear genuine and relate to the individual. Employers are expected to judge whether the documents are obviously fraudulent.

IRCA also provides for penalties or sanctions, such as fines, against employers who do not complete the verification process or who knowingly hire unauthorized aliens. INS, under its worksite enforcement program, and to a limited degree, Labor, are responsible for checking employer compliance with IRCA's verification requirements.

IRCA also prohibits employers with four or more employees from discriminating against authorized workers. The Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) and the Equal Employment Opportunity Commission share responsibility for investigating complaints alleging immigration-related discrimination.

Fraudulent Documents Have Undermined Effectiveness of INS' Employment Verification Process

IRCA's employment verification process is easily thwarted by fraud. Large numbers of unauthorized aliens have used fraudulent documents to circumvent the employment verification process. For example, data from INS' employer sanctions database showed that, over the 20-month period from October 1996 through May 1998, INS identified about 50,000 unauthorized aliens who had used 78,000 fraudulent documents to obtain employment. About 60 percent of the fraudulent documents used were INS documents; most of the rest were Social Security cards.

Large-scale counterfeiting has made employment eligibility documents widely available. For example, in November 1998 in Los Angeles, INS seized nearly 2 million fraudulent documents, such as counterfeit INS permanent resident cards and Social Security documents. These documents were headed for distribution points around the country. In its

[1] P.L. 99-603, 8 U.S.C. 1324a et seq.

1997 report to Congress,[2] the Commission on Immigration Reform reiterated its 1994 conclusion that the single most important step that could be taken to reduce unlawful migration was the development of a more effective system for verifying an employee's authorization to work.

INS Is Taking Steps to Improve Verification Process, Yet Considerable Obstacles Remain

INS has undertaken several initiatives to improve the employment verification process, but it faces significant obstacles. First, as mandated in the 1996 Act, INS is testing pilot programs in which employers electronically verify an employee's eligibility to work. However, INS has had difficulty in meeting its goal for enrolling employers in the pilot programs. Although INS originally expected to enroll 16,000 employers by the end of fiscal year 1999, only 2,500 were participating as of November 1998. According to various officials we spoke with, some employers are reluctant to participate in the pilots because of concern that participation may have a negative economic impact on their businesses. According to these officials, employers in some industries believe that, in the current tight labor market, they would not have enough authorized workers applying for jobs if they participated in a verification pilot. The employers reportedly fear that they could be put at a competitive disadvantage because employees rejected by the verification system might go to work for competitors who are not enrolled in a pilot.

Another reason for low participation in the pilot program could be that some employers are not aware of the pilots. Other federal and state agencies, such as Labor and state labor agencies, have contact with employers who might be interested in INS' pilot programs. While they did not have a formal role in informing employers about the pilots and generally did not do so, the Labor and state labor officials we talked to said they would be willing to inform employers about the INS pilots.

Second, INS has made little progress in reducing the number of documents that employers can accept to determine employment eligibility. Having a smaller number of acceptable documents would make the process more secure and reduce employer confusion. In February 1998, INS issued proposed regulations to reduce the number of documents that could be used from 27 to 14. However, as of February 1999, 27 documents could still be used, and INS did not know when the proposed regulations would be finalized.

[2] Becoming an American: Immigration and Immigrant Policy (U.S. Commission on Immigration Reform, September 1997).

Lastly, INS has begun issuing new documents with increased security features, which it hopes will make it easier for employers to verify the documents' authenticity. However, in addition to these INS documents, aliens can show employers various other documents that authorize them to work. Other widely used documents, such as the Social Security card, do not have the security features of the INS documents. Therefore, unauthorized aliens seeking employment can circumvent the improved security features of INS documents by simply presenting fraudulent non-INS documents—such as counterfeit Social Security cards—to employers.

INS and Labor Enforcement Efforts Have Been Limited

Since no verification system is foolproof, enforcing IRCA's employer sanctions provisions will always be important. INS has devoted a relatively small percentage of its enforcement resources to worksite enforcement, about 2 percent a year since 1994. In fiscal year 1998, INS completed about 6,500 employer investigations, which equated to about 3 percent of the country's estimated number of employers of unauthorized aliens. To best use its limited worksite enforcement staff, INS has attempted to target specific industries that historically have had a high probability of violations. Yet, 43 percent of the investigations INS opened in 1998 were not in the targeted industries.

To bolster its worksite enforcement efforts, INS in 1992 entered into an agreement with Labor that called for the agencies to work together in identifying employers suspected of hiring unauthorized workers. However, Labor has generally limited its assistance to INS to a review of employers' compliance with the employment verification paperwork requirements. Labor believes that delving into immigration-related worksite enforcement matters, such as the immigration status of workers, could hamper its own mission of enforcing worker protection laws. That is, unauthorized workers, fearing possible removal by INS, could be discouraged from complaining about labor standards violations. About 70 percent of all Labor investigations are based upon complaints; Labor initiates only about 30 percent. Under a new agreement with INS effective November 1998, Labor's role in this area has been reduced. To avoid discouraging unauthorized workers from complaining, Labor is no longer to review employer compliance with the employment verification procedures in investigations stemming from complaints. Labor is only to review employer compliance in Labor-initiated investigations.

INS Worksite Investigation Efforts Produced Modest Results

A major goal of INS' worksite program was to investigate employers INS believed intentionally hired illegal workers, including prosecuting some employers for criminal violations of immigration law. However, 83 percent of the investigations INS completed during the period we reviewed resulted in no employer sanctions. In fact, INS found nearly half of the 9,600 employers INS investigated to be in compliance with the employment verification procedures. INS initiated criminal proceedings in only about 2 percent of the investigations.

INS officials attributed these modest results to various factors. They said that the widespread use of fraudulent documents made it difficult for INS to prove that an employer knowingly hired an unauthorized alien. In addition, they said that INS' requirement that its district offices' worksite programs meet various numerical goals, such as identifying a certain number of unauthorized aliens, may have placed an undue focus on arresting unauthorized aliens, thereby undermining INS' overall goal to target employers suspected of intentionally hiring unauthorized aliens. For the closed cases we reviewed, INS collected about $2.5 million in penalties, about one-half of the $4.9 million employers had been ordered to pay. INS did not collect the balance for various reasons, including that the employer went out of business or went bankrupt.

INS Is Changing Its Approach to Worksite Enforcement

INS is in the process of changing its approach to worksite enforcement. INS developed a strategy for enforcing the immigration laws in the interior of the United States with five strategic priorities. Two of the priorities involve worksite enforcement. One calls for INS to pursue criminal investigations of employers who are flagrant or grave violators. However, the strategy does not describe the criteria INS will use to open investigations on such employers, such as defining a "flagrant or grave violation." Although INS' previous worksite program goal was similar, 83 percent of its investigations resulted in no employer sanctions. Another priority calls for INS to "block and remove employers' access to unauthorized workers." The INS official responsible for drafting the strategy told us that INS plans to build relationships with employers to create an effective deterrent to illegal immigration. By educating employers whom INS has found to have unknowingly hired unauthorized aliens, INS expects that such employers will be better able to comply with IRCA. This, in turn, would enable INS to focus its limited worksite enforcement resources on employers suspected of criminal activities. However, at the time of our review, INS had not specified how much staff it planned to devote to the worksite enforcement priorities.

Conclusions and Recommendations

INS faces significant obstacles to reducing unauthorized alien employment. Significant numbers of unauthorized aliens can still obtain employment because IRCA's employment verification process can be easily thwarted by fraud. Employers who want to hire only authorized workers can be deceived by unauthorized aliens' use of fraudulent documents. Other employers who seek "cheap labor" can intentionally hire unauthorized aliens under the guise of having complied with the employment verification requirements. Generally, employers of unauthorized aliens have faced little likelihood that INS would (1) investigate them, (2) prove that they knowingly hired unauthorized aliens, (3) collect fines, or (4) criminally prosecute them. Further, Labor's efforts to identify employers suspected of hiring unauthorized aliens have been limited and are to be even more limited in the future.

Because enforcement measures can only go so far, we believe INS is going in the right direction by testing electronic verification procedures, proposing to reduce the number of employment eligibility documents, and making INS documents more tamper-resistant to try to improve the verification process. However, obstacles such as reluctance on the part of some employers to participate in electronic verification pilot programs and lack of knowledge about them, have hampered INS' ability to improve the process. Electronic verification can be effective with employers in industries with a history of reliance on unauthorized aliens only to the extent that they use it. Therefore, inducing such employers to participate in the electronic verification pilots is important.

INS' new interior enforcement strategy lacks criteria for opening investigations on employers suspected of criminal violations. Having clear criteria is important if INS is to focus its limited staff to achieve its enforcement goals. Since INS is just beginning its new worksite enforcement strategy, it is too soon to know how the proposed changes will be implemented or to assess their impact on the employment of unauthorized workers.

Our report recommended that the INS Commissioner

- as part of the outreach program for INS' pilot verification programs, seek assistance from federal and state agencies, such as the Department of Labor and state labor agencies, in disseminating information to employers about the programs; and
- in implementing the interior enforcement strategy, clarify the criteria for opening investigations of employers suspected of criminal activities.

This concludes my prepared statement, Mr. Chairman. I would be pleased to answer any questions you or other members of the Subcommittee may have.

Contact and Acknowledgement

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