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Hearing on Senate Bill 0580

Testimony for the Record

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Background. I am currently the Director of National Security Policy at the Center for Immigration Studies and a former counsel to the 9/11 Commission, where I co-authored the monograph *9/11 and Terrorist Travel* alongside recommendations that appear in the *9/11 Final Report*.¹ Prior to 9/11, I was counsel to the U.S. Senate Judiciary Subcommittee on Technology and Terrorism where I specialized in foreign terrorist activity in the United States and worked to pass the federal criminal and redress system in place today for identity theft. Today I focus on issues pertaining to border and identity security and its nexus to national security issues. In September I released an extensive report on E-Verify, which will be the focus of this testimony, alongside some basic facts in regard to how border issues affect national security. I have testified before the U.S. Congress ten times, and I am privileged to submit my testimony to the Indiana Senate Committee on Pensions and Labor today.

E-Verify. In line with current federal law, Senate Bill 0580 prohibits an employer from knowingly hiring an unauthorized alien. Employers who use the federal program E-Verify in good faith, however, are indemnified; similar to the federal policy that permits an affirmative defense against federal law enforcement action for the hiring of unauthorized workers for those employers that enroll in E-Verify. Encouraging employers to sign-up and use E-Verify will align Indiana law with federal law while using state powers in licensing to pull the plug on bad actor employers who knowingly, and repeatedly, hire unauthorized workers.

¹ See www.911securitysolutions.com, for consolidated information on 9/11 Commission border work.

Mission statement by U.S. Citizenship and Immigration Services:

E-Verify is currently the best means available for employers to electronically verify the employment eligibility of their newly hired employees. E-Verify virtually eliminates Social Security mismatch letters, improves the accuracy of wage and tax reporting, protects jobs for authorized U.S. workers, and helps U.S. employers maintain a legal workforce.²

In a report released in September 2008, *If It's Fixed, Don't Break It: Moving Forward with E-Verify*³, E-Verify was shown as 99.5 percent accurate with more than 1,000 employers voluntarily signing up per week. According to the most recent official study of the program by Westat, these numbers are steadily improving and E-Verify may to date be the most successful interior border program in place. However, E-Verify remains vulnerable to those who seek its demise. The program was reauthorized under emergency measures in late 2008 by Congress, but only until March 2009.

While President Obama supported E-Verify during his campaign as a program that supported American workers, on January 29, 2009, the administration announced a delay in implementation of an Executive Order due to go into effect in February 2009 that requires federal contractors to use E-Verify for workers (paid with U.S. taxpayer monies) employed on federal contracts. That delay will be at least until May 2009, according to a press release by the U.S. Chamber of Commerce, the entity taking credit for the delay and seeking the demise of E-Verify. (In an op-ed published in *The Washington Times*⁴ in August 2008, I discuss the Chamber's lobbying efforts against E-Verify.) The signal this development sends is this: Indiana needs to work on its representatives in Congress to assure E-Verify is reauthorized. The U.S. House did so in the economic stimulus package passed January 28, 2009, but the U.S. Senate is unlikely to carry the same provision, making unclear the fate of E-Verify.

S. 0580's strength as pertains to employers is predicated on the success of the E-Verify system. If this bill is to be effective, E-Verify must survive. This body can and should do what it can to influence Congress to reauthorize E-Verify and send a message to Homeland Security Secretary Napolitano and President Obama that backing off from E-Verify would demean the integrity of an already severely troubled immigration system; once more blindfold employers from determining authorized from unauthorized workers; increase job insecurity for American workers; and decrease our ability to better secure our critical infrastructure worksites, like the oil refinery in Evansville, Indiana, where 15 illegal immigrants were arrested by Immigration and Customs Enforcement in December 2008.

²

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=1d25be0cbcf90110VgnVCM1000000ecd190aRCD&vgnnextchannel=a877be0cbcf90110VgnVCM1000000ecd190aRCD>

³ <http://www.cis.org/Everify>

⁴ <http://www.cis.org/Everifyambush>

E-Verify quick facts. E-Verify is fast, efficient, inexpensive for employers to use, and effective at rooting out fraud. Error rates have come down substantially, and continue to drop, as the Social Security Administration (SSA) and U.S. Citizenship and Immigration Services (USCIS) streamline their matching and referrals. A great help will be when more photos are available with the Photo Screening Tool, further reducing the ability of job applicants to feign legal work status. Most interesting is that the percentage of those not authorized to work when vetted through E-Verify mirrors the percentage of illegal workers in the U.S. workforce, about 5 percent.

While the September report holds many E-Verify details, some of the key facts on E-Verify follow.

- 94.2 percent of all E-Verify queries instantly verify as of 2007; as of the third quarter of 2008, 96.1 percent of employees are confirmed as work authorized before any type of mismatch notice or need for action by the employee or employer⁵
- 90 percent of the new hires who receive a tentative nonconfirmation from the SSA query (this represents 5.2 percent of all queries) either choose not to contest it or fail to establish their work authorization status
- Only 0.4 percent of all E-Verify queries are U.S. citizens who have to take action to successfully resolve a tentative nonconfirmation
- 5.1 percent of transactions receive a Social Security nonmatch; only about 1.6 percent are contested
- 4.7 percent of transactions receive final nonconfirmations; according to a Center for Immigration Studies report⁶ from November 2007, approximately 5 percent of the U.S. workforce is illegal
- According to DHS, several hundred instances of document fraud have been detected
- The number of employers enrolled in E-Verify after the program became web-based in 2004 was 1,533 in the first half of FY 2005. (See a 2007 Westat report on the program.) In the first two months of 2008, 10 percent of all new hires in the first two months of 2008 were checked by E-Verify. As of August 2, 2008, there were 78,000 employers enrolled representing over 315,000 sites and over 5 million queries processed so far this fiscal year-to-date. As of January 13, 2009, 100,890 employers at over 400,000 worksites, see Lou Dobbs January 13, 2009⁷.

⁵ USCIS E-Verify Statistics

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=f82d8557a487a110VgnVCM1000004718190aRCRD&vgnnextchannel=a16988e60a405110VgnVCM1000004718190aRCRD>

⁶ http://cis.org/immigrants_profile_2007

⁷ <http://www.cis.org/griffith/kephartondobbs91309>

In FY 2007, E-Verify received about 3 million queries, 157,000 were found to be unauthorized to work despite having evaded the I-9 process previously, stopping their illegal employment.

- Cost to employers, according to the 2007 E-Verify Westat report, is "\$100 or less in initial set-up costs for the Web Basic Pilot (E-Verify) and a similar amount annually to operate the system."
- Enrolling in E-Verify and signing the E-Verify Memorandum of Understanding takes about 10 minutes and can be e-signed.
- The photo-screening tool in E-Verify helps stop identity theft and counterfeit identities and currently applies to non-citizens who supply documents with DHS photos, which today only represents about 3.8 percent of all queries. DHS is trying to get U.S. citizen passport photos, visa photos, and state-issued driver's license photos in the system as well, as these are the most used documents used to verify identity.
- Up from September 2008, twelve states now require use of E-Verify: Three states – Arizona, Mississippi and South Carolina – apply E-Verify to all employers in the state, public and private. Arizona's law was challenged but upheld by the Ninth Circuit, leaving little to doubt of other states following Arizona's lead in making E-Verify mandatory for all businesses. Nine other states – Colorado, Georgia, Idaho, Minnesota, Missouri, North Carolina, Oklahoma, Rhode Island, and Utah – apply E-Verify to those working in the public domain: state agencies, contractors, or subcontractors. Tennessee encourages use of E-Verify while only one state, Illinois, limits its use.

Terrorist travel and U.S. border systems. Terrorists, drug runners, alien smugglers and counterfeiters all have similarities, and key among them is taking advantage of vulnerabilities to gain access to locations that benefit them. The United States has long been an attraction both politically and economically. This is a broad lesson learned from my work on the 9/11 Commission, where all the hijackers abused our ports of entry, the two World Trade Center pilots abused our immigration benefits system to stay in the country longer, and one hijacker dodged government services because he knew he was an illegal overstay. In addition, the hijackers had 17 driver licenses and 13 state-issued IDs. Fraud was used to obtain at least seven of the state-issued IDs.⁸

Many other terrorists and lesser criminals, including those in the United States illegally for economic reasons, abuse vulnerabilities in garnering access to IDs in order to get American jobs.

⁸ For more information on secure IDs – which underpin any document-based program like E-Verify – see testimony before the U.S. Senate Judiciary Committee, May 2007. Testimony of Janice Kephart, *Will REAL ID Actually Make Us Safer?* http://www.911securitysolutions.com/index.php?option=com_content&task=view&id=134&Itemid=38

E-Verify makes that much harder for an unauthorized worker, while better assuring a legal workforce is just that.⁹

In March 2005, I provided a summary of terrorist abuse of our border systems in testimony before the U.S. Senate Judiciary Committee, Joint Hearing between Subcommittees on Immigration and Homeland Security.¹⁰ In June 2006, the northern border was the focus before the U.S. House Committee on the Judiciary Subcommittee on Immigration, Border Security and Citizenship¹¹ in a hearing about the need to stop the legal entry of anyone claiming to be a US citizen from simply walking across our land border ports of entry without any identification or unverifiable identification.

Alien smugglers have easy access, still, to the United States. More recently, in July 2008, U.S. intelligence officials did a national security assessment of the threat posed by smuggling networks¹² from East Africa where anti-American sentiment is well-known, with smugglers smugly discussing routes and fees for gaining illegal entry for clients.

Conclusion. Programs that work like E-Verify help employers differentiate between authorized and unauthorized workers, and in so doing, make it harder for those with illegal presence to take American jobs from American workers or worse, gain access to critical infrastructures or government property where national security is at stake. S. 0508 brings Indiana law in line with federal law by supporting employers who sign up for E-Verify, and taking action against those that do not. This is policy that on a federal level has proven effective, and S. 0508 would appear to be a compatible counterpart which would benefit Indiana and the nation.

⁹ One more current example is Elzhabi, an established terrorist, who had multiple driver licenses and worked for a school bus company driving children for a few months outside of Minneapolis. See *When a Terrorist Gets a School Bus Driver's License in Minnesota, and Uses It* (Dec. 31, 2008) at <http://www.cis.org/node/968>.

¹⁰ Testimony of Janice Kephart, *Strengthening Enforcement and Border Security: The 9/11 Commission Staff Report on Terrorist Travel*
http://www.911securitysolutions.com/index.php?option=com_content&task=view&id=57&Itemid=38

¹¹ Testimony of Janice Kephart, *The Need to Implement WHTI to Protect U.S. Homeland Security*
http://www.911securitysolutions.com/index.php?option=com_content&task=view&id=100&Itemid=38

¹² Eileen Sullivan, Associated Press, *African smuggling rings possible US terror threat* (July 7, 2008)
http://www.911securitysolutions.com/index.php?option=com_content&task=view&id=170&Itemid=38