



July 20, 2009

Members of the Senate Judiciary Committee  
United States. Senate  
Washington, DC 20510

**RE: Oppose a biometric-based employment verification system in  
comprehensive immigration reform**

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Dear Senator;

On behalf of the American Civil Liberties Union (ACLU), a nonpartisan public interest organization dedicated to protecting the constitutional rights of individuals, and its hundreds of thousands of members, activists, and fifty-three affiliates nationwide, we urge you to oppose any proposals that expand or mandate electronic employment verification. The Senate Judiciary Subcommittee on Immigration, Refugees and Border Security has scheduled a hearing entitled, "Ensuring a Legal Workforce: What Changes Should be Made to Our Current Employment Verification System?" on Tuesday, July 21, 2009. The ACLU is particularly concerned about any proposals advancing a biometric-based employment verification system, and urges you to oppose any type of biometric-based verification or national worker ID system in any Comprehensive Immigration Reform ("CIR") proposal.

**I. BIOMETRIC-BASED EMPLOYMENT VERIFICATION IS LOGISTICALLY INFEASIBLE, COSTLY TO GOVERNMENT AND EMPLOYERS, AND PROVEN TO BE A POLITICAL FAILURE IN THE U.K.**

**Implementing a biometric national worker identification will require constructing a huge new federal government bureaucracy at staggering costs.** The U.S. government has never erected a universal worker ID system, and there is no existing federal agency (DHS, SSA, Labor Department, U.S. Postal Service) designed or equipped to implement a universal system to collect the DNA, verify documents, and authenticate the identity of every worker in the U.S. A universal biometric worker ID system would require the creation of a new federal worker ID bureaucracy, establishment of new government field offices across the country, hiring tens of thousands of new federal employees, and the construction of huge new information technology systems. This endeavor would result in huge costs to businesses, workers and the government.

**A mandatory biometric worker identification system will not solve the problem of unauthorized employment in the U.S.** Proponents of biometric-based employment verification claim that this will help stem the tide of unlawful immigration to the U.S. However, this conclusion is based on the faulty premise that a biometric worker ID system will shut bad-faith employers out of business. Nothing in a biometric-based verification system will force bad-faith employers to enroll in or comply with government verification mandates. Unscrupulous employers who rely on below-market labor costs will continue to flout the imposition of a mandatory employment eligibility pre-screening system and biometric national ID, just as they do with the current enforcement regimen. Furthermore, because no biometric is 100 percent effective (for example, fingerprints are worn by manual labor), there will always be loopholes for noncompliant employers.

**A biometric national identification system would violate American values.** In order to create a biometric ID, every worker in America will have to present his or her birth certificate and other identification documents and then have his or her biometric (such as fingerprints or iris scan) captured. A system that subjects each and every U.S. worker to such fingerprinting and government monitoring will be enormously unpopular, especially at a time of rising unemployment, and will pose a significant threat to the passage of any CIR legislation.

**These concerns are not hypothetical.** The British government recently attempted to implement a national mandatory biometric identification system, only to find its plans derailed by widespread public opposition, costs estimated as high as \$30 billion, concerns about data privacy and extensive technical problems. The cards are now voluntary instead, and the program has become an embarrassment for the government. Conservative party officials vow to eliminate it altogether if they assume power in the coming elections.

## **II. MANDATING E-VERIFY WOULD JEOPARDIZE HUNDREDS OF THOUSANDS OF INNOCENT U.S. WORKERS, RETIREES, AND PERSONS WITH DISABILITIES.**

Beyond the aforementioned problems associated with biometric-based employment verification, the ACLU urges the Senate to reject any attempts to expand or mandate the current E-Verify program for the following reasons.

**Neither DHS nor SSA is equipped to handle a universal E-Verify mandate.** The data error rates in both Social Security Administration (“SSA”) and Department of Homeland Security (“DHS”) files concerning work-eligible U.S. citizens, lawful permanent residents, and visa holders are well-documented. False non-confirmations result from many types of errors including human error (paper files being converted to electronic formats, resulting in errors); misspellings and incorrect name order (many names have multiple possible spellings, especially in the case of transliteration from non-Latin alphabets; some immigrants come from cultures in which naming and name-order conventions differ from those in mainstream U.S. culture); user error (employers inputting workers’ I-9 data make mistakes in reading handwriting, documents, complex names); and database maintenance and aggregation (Verification Information System database aggregates eight different DHS and legacy INS databases). The available evidence suggests that about one percent of all E-Verify queries result in false non-confirmations for legal workers, out of a total non-confirmation rate of 3.1 percent

during the first quarter of 2009.<sup>1</sup> Under a mandatory electronic employment verification system, a one percent error rate would affect about 600,000 workers annually. That rate could increase with new mandates because expanding the E-Verify system would place added strain on the system's infrastructure and staffing.<sup>2</sup> Resource strains would be especially severe when U.S. citizens are required to contact SSA, which, at its lowest staffing level since the early 1970s, is overwhelmed with a clogged disability benefits backlog and is facing a looming baby boom retirement workload bubble.<sup>3</sup> Both SSA and DHS are ill-equipped to implement a mandatory electronic verification system, and doing so would prevent SSA from fulfilling its primary obligations to the nation's retirees and people with disabilities.

**Mandatory E-Verify Would Threaten the Livelihood of Hundreds of Thousands of U.S. Workers, at a Time of Rising Unemployment.** Under the Memorandum of Understanding signed by employers voluntarily participating in the current E-Verify program, workers are given only 10 days to fix a Tentative Non-Confirmation ("TNC"). The MOU requires participating employers to notify the new hire of the TNC. The worker is then given eight days to contact Citizenship Immigration Services ("CIS") by telephone or to visit an SSA field office to correct her or his record. CIS or SSA then has an additional two days to correct the record. All told – a newly hired employee has a mere 10 days to navigate a federal bureaucracy in order to fix an error-filled record, through no fault of the employee. These time demands on innocent U.S. workers are unfair and impractical. Each erroneous report would require a new worker to take hours, perhaps days, off of his or her new job to fix the record. Many employers enrolled in E-Verify fail to notify prospective new employees of their TNCs and these workers are never put on notice of their erroneous records and thus do not correct them with CIS or SSA. The DHS and SSA database errors will wrongly and unfairly delay the start of employment or block the ability to work altogether for lawful U.S. workers. Congress should focus on promoting ways to facilitate quick employment for unemployed U.S. workers, not on imposing new obstacles that punish innocent U.S. workers who happen to have faulty records due to government database errors.

**Mandatory employment verification poses unacceptable threats to American workers' privacy rights and increases the risk of identity theft.** A nationwide mandatory electronic employment verification system ("EEVS") would be one of the largest and most widely accessible databases ever created in the U.S. Its size and openness would be an irresistible target for identity theft and almost inevitably lead to major data breaches.

**Mandatory employment verification will perpetuate discrimination against workers who look or sound "foreign" and impose new burdens on authorized workers.** U.S. Government Accountability Office and DHS studies have documented employer abuse in the existing voluntary E-Verify system, including screening out workers with "foreign" surnames,

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<sup>1</sup> "The Next Generation of E-Verify: Getting Employment Verification Right," Migration Policy Institute (July 2009) at 7.

<sup>2</sup> See *id.* at 8.

<sup>3</sup> SSA estimates that mandating all employers to screen new hires through E-Verify would result in between 1.3 million and 3/6 million U.S. citizens being required to visit SSA field offices annually to resolve Tentative Non-Confirmations. See "The Facts on Employment Verification: Current Proposals Are Unworkable for SSA, Threaten Progress in Reducing Disability Claims Backlog," Letter from Rep. McNulty (D-NY) and Rep. Rangel (D-NY) to Democratic colleagues, Mar. 27, 2008.

failing to explain TNCs to employees, and punishing employees with TNCs by withholding wages and assignments during the period until any discrepancy is resolved. This has been the reported experience under the current voluntary E-Verify program which tends to attract good-faith employers who want to comply with the E-Verify program rules and U.S. immigration law. A mandatory E-Verify program would include a higher proportion of employers who would intentionally misuse the system.

For the aforementioned reasons, the ACLU urges you to reject any attempts to expand or mandate E-Verify, or to impose a biometric-based employment verification or any national worker identification system. Instead the ACLU urges Congress to mandate a thorough clean-up of error-ridden DHS and SSA databases before any employment verification program is expanded.

If you would like more information, please do not hesitate to contact Joanne Lin, Legislative Counsel, at [jlin@dcaclu.org](mailto:jlin@dcaclu.org) or (202) 675-2317.

Sincerely,



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