

House Judiciary Subcommittee on Immigration Policy and Enforcement Hearing on the E-Verify Program

Hearing Held on February 10, 2011

GALLEGLY:

Good morning. I call the subcommittee to order.

And I'd like to -- I have an opening statement, then we'll defer to our colleagues and get our hearing going.

Most folks on this committee know that I have a long -- I've long said that the way to solve the problem of illegal immigration is not all that complicated.

First, we must enforce our laws and second we must remove the magnets that encourage illegal immigration. And finally, we must remove the benefits that make it easy for illegals to stay in this country.

With nearly 14 million unemployed Americans, removing the magnets is more important now than ever.

The biggest magnet for illegal immigrants is jobs. So we owe it to the American people to do whatever we can to reduce the number of American jobs going to illegal immigrants. The E-Verify program helps to do just that.

E-Verify allows employers to check the work eligibility of new hires by running the employee's Social Security number or alien identification number against Department of Homeland Security and Social Security Administration records.

In 1995, I chaired a congressional task force on immigration reform. We published a 200-page report with more than 80 specific recommendations. One of those was for an electronic employment eligibility verification system, which was included in Chairman Smith's 1996 immigration reform bill. That system is now known as E-Verify.

It is currently a voluntary program for most of the almost 250,000 employers who use it. It's free, Internet-based, and very, very easy to use. And the employers who use it all agree.

In October 2010 USCIS customer satisfaction survey, E-Verify received 82 out of 100 on the American customer satisfaction index scale. The 82 score by E-Verify is much higher than the federal government's satisfaction index of 69.

And 76 percent of the National Federation of Independent Business Members said it would be a minimum or no burden if there was one telephone number or a single Internet website where we could check a new employee's eligibility to work. And that's exactly what E-Verify is.

But I also want to acknowledge that there are two very important components that must exist to help ensure that U.S. jobs go to American and legal residents.

First, the federal government must put in place enough enforcement resources to ensure proper use of E-Verify. Employers must have to know if they misuse the system, for instance, by ignoring the fact that the photo on E-

Verify does not match the photo on the identity document provided by the employee. They will be investigated and held accountable.

Right now, there is nowhere near the level of enforcement needed for E-Verify or, really, for that matter, anything having to do with illegal immigration.

Second, the SSA must work in conjunction with DHS to use social security no-match letters. If the same social security number is being queried by employers in several different states at around the same time, the likelihood of fraud is very high.

These steps will help E-Verify continued success and I look forward to the testimony of our witnesses today.

And at this point I would yield to my good friend from California, the ranking member, Ms. Lofgren.

LOFGREN:

Thank you, Mr. Chairman.

Today's hearing on E-Verify continues the conversation we began at the subcommittee's first hearing on ICE worksite enforcement.

The situation we face is clear to everyone: Our immigration system is broken and it doesn't meet the needs of our country.

As we discussed before, simply continuing to enforce our broken immigration laws is not a serious job proposal.

Pressing harder on the gas without fixing the vehicle will only endanger our recovering economy, hurt American workers, and leave our immigration system as broken as when we started.

Being from Silicon Valley, I am a big advocate for technological solutions for problems. And I support a carefully designed electronic employment eligibility verification system that works and contains sufficient safeguards.

In fact, since 2005, every serious proposal to fix our broken immigration system has tackled the challenge of verifying the employment eligibility of our workforce.

But we need to take into account the complex realities of our economy. There are those who argue that making E-Verify mandatory for all employers will destroy the jobs magnet, by preventing unauthorized workers from getting new jobs.

They want employers to use E-Verify not only for new hires, but for existing employees as well.

They believe this issue boils down to simple math, that every time we remove an undocumented worker from a job or from the country, we open that job for a native-born worker.

But this simple math is just bad math. The truth is that mandating E-Verify alone would not destroy the jobs magnet. It would actually encourage businesses and workers to enter the underground economy by working off the books.

When the Congressional Budget Office analyzed the SAVE Act in 2008, it concluded that mandating E-Verify without reforming our broken immigration laws would suck \$17.3 billion out of the tax system.

Driving millions of workers further into the shadows would not only cost this country \$17.3 billion in lost revenues, it would depress wages and working conditions for all workers, including United States workers, as unscrupulous employers would be better able to undercut those that play by the rules.

It gets worse.

In some industries, like agriculture, mandating the use of E-Verify would actually reverse the polarity of the magnets, shipping millions of jobs overseas.

In agriculture, where 75 percent of the jobs are filled by undocumented immigrants, E-Verify would decimate the agricultural economy. And as we have learned over the years, the increase in wages necessary to get U.S. workers to go to the fields as migrant workers would hike production costs so high that U.S. food products would no longer be competitive with imported products.

The end result would be the closure of American farms, a less secure America and the mass offshoring of millions and millions of U.S. jobs, including all of the upstream and downstream jobs that are created and supported by our agriculture industry.

The jobs magnet that draws people to this country, a sign of economic prosperity and opportunity, would be reversed, repelling businesses and entrepreneurs from investing in our country and contributing to our economic recovery.

I am pleased to have these witnesses before us today because I expect that we will hear about ongoing efforts to improve the accuracy of E-Verify.

I also expect, however, that we will hear about serious challenges that remain.

One issue of great concern during the period of economic recovery and high unemployment is the E-Verify error rate, which has directly led to tens of thousands of U.S. citizens and employed, authorized non-citizens, to improperly lose their jobs.

Based on an analysis of USCIS data, the National Immigration Law Center estimates in their submitted testimony that mandating E-Verify for all employers would jeopardize the jobs of about 1.2 million American citizens and work-authorized non-immigrants.

I would ask unanimous consent, Mr. Chairman, to enter that statement into the record.

GALLEGLY:

Without objection.

LOFGREN:

Today's hearing is, "E-Verify, Preserving Jobs for American Workers." But until the problems are fixed and until we fix our broken immigration system more generally, this statement is simply untrue.

Mr. Chairman, I thank you for recognizing me for my opening statement, and I yield back.

GALLEGLY:

I thank the gentlelady.

At this time, I would yield to the chairman of the full committee, my good friend, Lamar Smith.

SMITH:

Thank you, Mr. Chairman.

With unemployment over 9 percent, now for 21 months, jobs are scarce and families are worried.

According to the Pew Hispanic Center, 7 million people are working in the U.S. illegally. These jobs should go to legal workers.

One effective program to help ensure jobs are reserved for citizens and legal workers is E-Verify. It's an electronic employment eligibility verification system run by the U.S. Citizenship and Immigration Services in conjunction with the Social Security Administration.

Through E-Verify, the Social Security numbers and alien identification numbers of new hires are checked against Social Security Administration and Department of Homeland Security databases in order to help employers determine who is eligible to work in the U.S.

I've used this program, frankly, repeatedly, to ensure that all staff members in my office are eligible to work in the U.S., as all members of Congress are required to do. It's free, quick, and easy to use.

I am aware of criticisms of E-Verify, some legitimate and most not. But the fact remains that E-Verify is a very effective tool for employers who want to hire legal workers.

Perhaps the most valid criticism of E-Verify is the identity theft loophole. Specifically, if an employee provides an employer with a stolen Social Security number and matching identification information, E-Verify will determine that the Social Security number is one that is work eligible.

USCIS has taken steps to help close the ID theft loophole. For instance, they have instituted the photo matching tool. This allows an employer to view a picture of the employee from a green card and employment authorization document or passport to determine that the employee is in fact the person to whom the Social Security number or alien identification number was issued.

I am interested in hearing what USCIS has to say today about further improvements for the identity theft loophole and expansion of the photo match tool.

Also, it is critical that DHS and SSA work together to investigate any suspicious overuse of Social Security numbers through E-Verify.

One issue regarding the identity theft loophole -- that I hope Ms. Bertucci will address -- was noted by a 2009 Westat study on E-Verify.

The study stated that 3.3 percent of all E-Verify queries are for unauthorized workers, and just over half of those are actually found to be work authorized. Now this figure is often cited by opponents to the program.

However, it's important that Westat says they estimated this percentage based on their assumptions of the number of illegal immigrants in the workforce. It was not based on the discovery of any illegal immigrant individuals actually in the workforce. So I would caution against using this number.

Studies by Westat and USCIS show that E-Verify's work eligibility confirmation rates continue to improve as the system is upgraded. Last year's USCIS data shows that 98.3 percent of employees were confirmed as work authorized within 24 hours. And a 2009 Westat report found that those eligible to work are immediately confirmed 99.5 percent of the time.

Nearly 250,000 businesses now use E-Verify, and over 1,300 more sign up for it each week.

I supported the previous administration's attempts to expand the number of employers using E-Verify, and they did so through outreach to businesses. But they also did so by mandating certain federal contractors and others use E-Verify.

Today, I hope to hear how the current administration plans to expand those requirements. With 26 million American unemployed or underemployed, expanding E-Verify would help open up jobs that they need.

I thank you, Mr. Chairman, and I'll yield back the balance of my time.

GALLEGLY:

I yield to the ranking member of the full committee, my good friend, Mr. Conyers.

CONYERS:

Thank you, Chairman Gallegly.

I wasn't at the first subcommittee meeting hearing, and so I didn't have a chance to put in my congratulations to your chairmanship.

GALLEGLY:

Thank you.

CONYERS:

We're here faced with a very curious problem. In a way it's simple, but then in a way, there's some problems and complexities here.

Now, we meet in the midst of record deportations from the United States for the last two years. Those numbers have been going up.

And there's no one that I know of that would argue that we should stop enforcing our immigration laws. But enforcement without reform will promote a race to the bottom that can only hurt the American worker in the end.

And that's why I ask unanimous consent to put in the "Labor Movement Framework for Comprehensive Immigration Reform" by two large unions, AFL-CIO and Change to Win.

These two unions represent over 16 million workers, more than 60 million -- more than 60 unions and have enforced -- have opposed enforcement-only approach and have called for real solutions that can fix our broken immigration system.

So I hope that the discussion this morning in Judiciary turns around the two twin methods that many are recommending. Enforcement, yes, but that we've got to also talk about the real solutions of reform.

Enforcement and reform is what I'm going to be looking for in our discussion this morning.

You see, more and more are beginning to recognize that an enforcement-only approach does not diminish the demand for willing workers. They could care less about enforcement. They all know they could be busted.

And, you know, as I travel across the country, Ranking Member Lofgren, every hotel I go in, there are people that if you wanted to bet whether they had legal status in this country or not, I would be willing to take that bet because I think -- I suspect not.

And so we have a certain, sometimes -- hypocrisy going on. Some of the very people that want to -- tough enforcement are the ones that are benefiting from this workforce that is here, knowing that if they get turned in or turned over to law enforcement, or ICE, they're on the way out.

And so, I -- I just want us to think about what are we thinking about and what are we talking about when we raise the issue of reform? Because enforcement only will not diminish the demand for willing workers, but merely push the undocumented further into the shadows, which then makes them more susceptible to abuse and exploitation, which drives down wages and working conditions for other workers, citizens and non-citizen, alike.

That's why the unions want us to look more at the reform part of this immigration challenge.

And that's one of the many dangers of an over-rush to E-Verify, mandatory for all workers. Because without fixing our immigration system, the problem's going to -- will continue.

We know the Congressional Budget Office estimates that E-Verify, without broader immigration reform, will suck \$17.3 billion annually out of our federal tax revenues. Because millions of workers are currently on the books and paying payroll taxes. And what will they do but simply go off the books and into the underground economy, which empowers bad employers and endangers everyone else.

We take notice of the fact that immigrants often fill critical gaps in our own workforce.

Can we be candid here this morning? There are too many jobs that Americans are unwilling to take, period. They don't want the work, it pays -- it's a lousy job and it doesn't pay on top of it. And -- and there is where the market for immigrant -- illegal immigrant labor comes in.

In the 111th Congress, we found out at a hearing on agricultural workers that experts on all sides of the debate agreed that Americans are not returning to the fields to work. Who doesn't know that? Nobody wants that stoop labor out in -- out on -- in farms, under tough conditions.

We learned that the increase in wages needed to get our workers to perform seasonal agricultural work would put American farmers out of business. We can't afford them.

And a story told by one of our Republican's own witness demonstrated the economic harm that would be done if we followed their enforcement-only approach.

A grower who established a program to attract American workers to plant and harvest sweet potatoes had to close the program down because it just wouldn't be profitable.

Imagine the damage we would cause if our entire agriculture industry, millions of jobs, are -- were off-shored because they could no longer compete with international growers.

That is a possibility if we make E-Verify mandatory for all employers, including those in the agriculture industry. It would be everybody.

Who's got an answer for that? I hope that is raised in this discussion.

And I'll put the rest of my statement in the record, Mr. Chairman. And thank you for your indulgence.

GALLEGLY:

Without objection, the statement will be put into the record in its entirety. I appreciate the gentleman's comments.

And I want to welcome our two very distinguished witnesses today.

And for the record, our witnesses' written statements will be entered into the record in its entirety.

Our first witness, Theresa Bertucci, currently serves as the associate director of Enterprise Services Directorate for the U.S. Citizenship and Immigration services, known as USCIS.

Welcome, Ms. Bertucci.

And we will hear your testimony at this point.

BERTUCCI:

Thank you.

Chairman Smith, Chairman Gallegly, Ranking Member Lofgren and members of...

GALLEGLY:

Ms. Bertucci, could you just hit that button please? Thank you.

BERTUCCI:

Oh, I thought it was -- it is on.

I'm sorry.

Can you hear me now?

OK. Sorry.

Chairman Smith, Chairman Gallegly, Ranking Member Lofgren and members of the subcommittee, I am grateful for the opportunity to discuss our shared goal of effective employment eligibility verification through the E-Verify program.

I am pleased to report that the E-Verify program continues to grow at a steady pace. As of today, more than 246,000 employers are enrolled, representing more than 850,000 worksites, or 11 percent of employers. This 11 percent figure compares the 850,000 worksites to the 7.7 million business establishments from the U.S. economic census in 2007.

More than 1,300 new employers enroll each week. During fiscal year '10, 16.4 million queries were run, with more than 5.3 million new queries this fiscal year.

E-Verify's accuracy rate is improving. Overall data mismatches have been reduced by 5.4 percent since 2007, due to enhancements to the system.

We appreciate the work undertaken by GAO in addressing the success of the program and the challenges confronting E-Verify. We are actively working to implement its important recommendations to improve the system.

Strengthening the integrity of the system is one of our primary goals. While E-Verify alone cannot detect all instances of identity fraud, we are working to improve the ability to detect fraud and significant steps have been taken.

E-Verify expands its photographic verification to include U.S. passports and passport cards, employment authorization documents and permanent resident cards. Of the 400,000 matches of DHS photo documents, the system has detected 4,000 mismatches.

Since June 2010, E-Verify has used a commercial database to validate the legitimacy of employers using the system. The program has also increased monitoring and compliance of employer transactions. In fiscal year '10, we issued 16,125 compliance actions, with over 9,600 actions to date this fiscal year.

USCIS also remains dedicated to protecting employees' rights. E-Verify implemented an employee hotline that offers information and assistance on the program. And callers can also use the hotline to launch complaints about possible misuse or discrimination. The hotline handled over 15,000 calls last year.

USCIS and DHS civil rights, civil liberties have produced educational training videos that provide information to employees and employers about their rights and their responsibilities.

In the spring of 2011, we plan to pilot the E-Verify self-check feature. Self-check will be a free, web-based service that allows workers to verify their government records before they are hired, which serves to both empower employees with information and to help further reduce data mismatches.

Self-check will have identity assurance protections built into the system.

USCIS is dedicated to be fully engaged in the improvement of E-Verify so its use can increase. To achieve that goal on an ever broadening scale, additional challenges remain.

For example, the E-Verify system is predicated on an employer's Internet access. The ability of some sectors of the market who access the system will need to be addressed.

As use increases, federal agencies involved in the program will need to expand their capacity to administer the daily results of the query process, including the process of providing assistance to employees who assert system error.

The increased use of E-Verify will also require USCIS to improve its information technology infrastructure and analytical tools, allowing for increased monitoring and compliance.

The program has made great strides in becoming a fast, easy to use and more accurate tool that helps employers maintain a legal workforce and comply with our nation's immigration laws. We're poised to meet the challenge that accompanies the growth of E-Verify and the needs of our customers, both businesses and employees.

On behalf of USCIS, Director Alejandro Mayorkas and all of our colleagues at USCIS, we appreciate the Congress' continued strong support of the program.

Thank you for the opportunity to testify before the subcommittee. I look forward to your questions.

GALLEGLY:

Thank you very much, Ms. Bertucci.

Our second witness is Richard Stana. Mr. Stana serves as director of Homeland Security and -- and Justice Issues at the U.S. department -- at the GAO; and has dedicated 35 years of service to the GAO and has served at headquarters, field and overseas services, and directed reviews on a wide variety of complex and military -- both military and domestic.

Mr. Stana, welcome.

STANA:

Thank you, Chairman Gallegly, and Ms. Lofgren, for inviting me to testify at this important hearing.

As you know, immigration experts say that the single most important step that could be taken to manage lawful immigration and reduce illegal immigration is to develop an effective worksite enforcement and authorization system.

E-Verify does provide employers with a tool to help identify those who are authorized to work.

Our recent report found that SSA and USCIS have taken some important steps and have improved the program. And yet, significant challenges remain.

In my statement this morning, I would like to just highlight three of those issues. And I know that you have my prepared statement and you probably have a copy of our full report, so let me go right into the three areas.

First, let's talk about TNCs.

They've substantially -- USCIS has substantially reduced the number of TNCs. Just a few years ago, the TNC level, the tentative non-confirmation level, stood at about 8 percent, and many of those turned out to be U.S. citizen who are improperly identified as not being work authorized.

That figure has gone down to about 2.6 percent, and most recently, below 2 percent, although that might be an anomaly. We'll wait and see. That's just one month worth of data.

USCIS did this by expanding the number of databases it queries and trying to refine the data through common error searches before they issue a TNC. And that has greatly reduced the number of TNCs.

Now having said that, TNCs continue to occur for a number of reasons, and mainly because the information in the data sets that USCIS, DHS and SSA have not consistently recorded an individual's name.

They might come to the United States with several surnames or be in the United States with several surnames, a hyphenated name, or a long name that was somehow shortened or Anglicized. And when you enter data or have data entered into different data sets, the name may be recorded differently and thus creates a mismatch and a TNC.

There's no law that compels an individual to record information consistently among several data sets, and this is an issue.

So improving government data sets, improving the information that employees have to help refine the data that they submit, and correcting inaccuracies or inconsistencies in agency data sets is really important to increasing the accuracy of E-Verify determinations.

In the short run, it might increase the burden of the agencies, particularly at SSA, but in the long run, it will not only help with the system, but with respect to SSA, when it comes time to retire and collect your earnings, your system name and earnings records will be ready to go.

The second issue I want to talk about is identity theft, and employer misuse. Despite improvements to reduce document fraud, E-Verify still cannot detect the use of eligibility documents that are either someone else's, who is work authorized or somehow the employer may provide a document to the worker to use that is not their own.

The exact magnitude of the problem is unknown, but Westat estimated that about 3.4 percent of the confirmations that were issued a few years ago were actually people who were not work authorized, but they either used phony documents themselves or were complicit with the employers in gaining work authorization.

The USCIS has a photo matching tool that Ms. Bertucci mentioned. It can currently use -- or it can currently query for three documents that have photos. But a person can seek and gain work authorization by using a number of -- any number of 26 documents. So while that has helped, it is not a panacea.

Also, with respect to the photo matching tool, there have been instances -- and we learned about this during our field work in Arizona -- where employers have coached workers not to use documents that are part of the photo matching tool and thus evading that important check.

Biometrics might help, but we all know biometrics can be costly for both the government and to employers. And there are privacy concerns about how much information the government ought to have on its files that will need to be resolved.

Turning to employer misuse, some employers have limited pay, restricted work assignments or even terminate employees who receive a TNC, and this is wrong. The magnitude is not known; it exists. USCIS cannot determine these things from its data sets.

But it needs to be more vigilant. I think it only scans about two percent of employers in its nets to try to figure out how much of this abuse is going on. It does not do a 100 percent check. It may be able to do that when this new data system comes up.

My final one involves resources and it's a subject that we've all talked about before at one time or another. An effective employment authorization system requires resources and -- to ensure compliance with the system. That's true for E-Verify it's true for the I-9 system. The resources are not there to do an effective job.

The USCIS must rely on ICE to investigate, sanction and seek prosecution, but given ICE's existing priorities and resource constraints and it's limited in its ability to do so. The same limitations would exist if E-Verify were to be made mandatory.

Regarding the on-site checks of employer compliance with E-Verify rules -- the so-called misuse or discrimination issue -- to our knowledge, USCIS staff has made one site visit as of last August to one employer to check on those issues.

So policy decisions are going to have to be made about how to effect credible work site authorizations and enforcement programs, using E-Verify, to include the resources that are needed to make it successful, and these policy decisions have yet to be made.

Thank you very much.

GALLEGLY:

Thank you very much, Mr. Stana.

At this point, before we go to questions, I'd like to take just a brief break and give the deputy chief of verification division at the USCIS an opportunity to provide us with a visual demonstration of how E-Verify works.

Kathy Lotspeich is our deputy chief.

Kathy, are you ready?

LOTSPEICH:

I'm ready.

GALLEGLY:

OK.

LOTSPEICH:

All right. So I'm going to just run really quickly for you, here, two cases, one that goes through automatically and one that's issued a tentative non-confirmation.

So here I am in our home page. I'm going to click on "new case."

There we go.

And what the employer does is they enter information from the Form I-9. So here on the Form I-9 -- the example I'm going to use is someone who attested to be a citizen of the United States, and I click "continue." And then it asks me which documents the individual presented. And that will help me then determine what I need to enter into the system.

For the demo today, I'm going to "list C&C (ph) documents," which are typically a driver's license and a Social Security card.

Then I just enter a few data points from the Form I-9. I actually do not need to put in their address or anything that's actually on the Form I-9. I can just add, for this case, the name, the date of birth, we have the citizenship status, and the Social Security number.

And -- let me do this here.

And then I go down and I enter the hire date.

And so for the hire date, I'm going to enter today's date, which is February 10, 2011.

I click "Continue."

And then here it comes up as employment authorized.

And so what the employer does at this point is they can take this case verification number and put it on the Form I-9, or they could also print out some of the case details. I'm going to select "yes." The person continues to work. And they could attach that to their Form I-9.

And note here, when the employer closes a case, they could also select if the case is invalid. So if some type of a mistake's made, this is a zero sum game. The employer can start the process over again.

Now I'm going to go ahead and close out.

And up here, I can also print this out and attach it to the Form I-9.

So now I'm going to go ahead and just really quickly show for you another case, where the individual gets a tentative non-confirmation.

So I select "new case."

And again, I'm going to attest as a citizen of the United States.

All right.

"List C&C (ph) documents."

And, again, just enter the information.

And then, as before, I enter today's date.

So now it's asking me to double check the information below.

The system knows it's about ready to issue a tentative non-confirmation, but does want to give the employer a second chance at correcting any errors.

I'm going to go ahead and select "continue."

And now this is telling me that I have a tentative non-confirmation with the Social Security Administration.

It tells me that the information does not match and it stresses that this does not mean that the employee is not authorized to work in the United States. However, there is additional action required and at this point, the employer

can give the employee a letter, which we have in Spanish and in English, giving a lot of the information about the employee, why the number did not match, what the employer needs to do, instructions for the employee, why they received this notice, the opportunity to contest or not contest, and then information about their rights.

And also, a number that they can call us at E-Verify or the Office of Special Counsel.

And then I will conclude our demonstration at this point. But basically the employee then takes this letter to the Social Security Administration or may call us at Department of Homeland Security to resolve their case.

Thank you.

GALLEGLY:

Thank you very much, Ms. Lotspeich.

At this point, I'd like to ask Ms. Bertucci a couple of questions.

In your written testimony, you discussed the Monitoring and Compliance branch, which detects potential misuse with E-Verify by employers.

I know you've issued 7,461, according to your statement, compliance letters, but what is the outcome of the issuance of these letters? And how many have been ignored? And what are the consequences of ignoring a compliance letter?

BERTUCCI:

Thank you, sir.

The difference between what I said in my oral testimony of 9,600 was up to today from the time we submitted. So that's the difference, I wanted to point that out. And that's this fiscal year. Last year, the number was 16,121.

We really stood up the compliance group, full swing, really, I would say, during 2010. We're about to hire even additional people out in Nebraska, so we're building up that compliance component.

We send out those letters as the first -- we monitor various behaviors by employers, to include not using the system - - signing up and not using the system. That's one thing we'll monitor.

We'll monitor multiple uses of SSNs to determine, prior to the fixes to the system that Kathy just demonstrated, to ensure that it wasn't errors in -- typos, frankly, or errors in entering the data. Those are some of the enhancements we did to the system related to that.

But more importantly, in cases something else goes wrong. We'll monitor those kind of behaviors and there are a number of other behaviors that we'll monitor to include running the system against a current employee, which is not allowed. It has to be upon hire. And/or not responding to a high number of TNCs possibly that we're not seeing closed out -- what's going on at that employee worksite?

So really, in the end, what we're doing is we're either calling them -- so let me be clear that we're either calling them in that 16,000 or 9,600 number, or we're sending them a written letter.

We are then doing the active reach-back to those employees -- employers -- I apologize -- to see whether it's an education issue or anything else.

In -- we have not yet done it, and the end results would be we would terminate their MOU with us on monitoring (inaudible).

However, if we saw egregious conduct by the employer in any way, shape or form that we believe is appropriate, according to our MOUs with ICE and/or DOJ's Office of Special Counsel, that has jurisdiction over possible discrimination, we work with those offices as well.

So that's the kind of compliance we're doing today. And our ability -- I think, Mr. Stana talked to it -- is that one of the things we really are trying to do is stand up a better analytical tool to be able to do better monitoring compliance.

Right now, frankly, it's a little clumsy on the basic technology infrastructure that we're -- that we have today. So we're working to improve that tool. Hopefully, by later this year, we're going to have a pilot running to do even more analysis of the data.

GALLEGLY:

Has there been employers prosecuted as a result of misuse?

BERTUCCI:

Not -- I cannot say that our -- first of all, we have not really referred anything yet to ICE. Under the MOU, we can (ph), OK?

So ICE is out doing their jurisdictional responsibilities, and sometimes, frankly, we will come across or they may come across an employer who also uses the system.

So the worksite enforcement and prosecution is on the ICE side of the house.

GALLEGLY:

But we have 9,000 of these letters that you've mentioned. And out of the 9,000-plus...

BERTUCCI:

Right.

GALLEGLY:

There really hasn't been any consequence at all, has there?

BERTUCCI:

Well, we -- the system is a voluntary system. To a great extent, we believe the majority of the employers who are using the system are trying to comply with the law and the work -- and the requirements of our system.

So what we are doing is the outreach to ensure that we -- is there a training issue? Is there a data issue?

It's those kinds of things. We do not have enforcement authority within CIS, certainly, on the prosecution standpoint. But if there's egregious behaviors that we believe are worthy of referral, then we would refer those to ICE within their own set of priorities for follow-up and possible review.

GALLEGLY:

Obviously if the program was not voluntary, and it was mandatory, the situation would -- and the incentive on the part of the employer would be greatly different. In fact, this -- this program was originally introduced as a mandatory. It was passed out of this committee and the bill mandatory. And then it only came back in conference. That's when it got downgraded to something less than what would be effective, in my opinion.

My time has expired. I yield to the gentlelady from California, Ranking Member, Ms. Lofgren.

LOFGREN:

Thank you, Mr. Chairman.

Before my questions, I'd like to take care of a few housekeeping items.

First, Congresswoman Sheila Jackson Lee called to let me know that she is ranking member of a subcommittee over at Homeland Security and hopes to get here if that hearing concludes and offers her apologies for the unavoidable absence.

I would also like to ask unanimous consent, Mr. Chairman, to submit statements from the Agricultural Coalition for Immigration Reform, the American Council on the International Personnel, the Main Street Alliance for the National Leadership Council.

Statements from the faith community, including the Catholic Bishops' Committee; the American Jewish Committee; Church World Service; Sisters of Mercy; the Unitarian Universal Association of Congregations; the Friends Services; the Episcopal Diocese of California; the St. Norbert's Abbey; the Evangelical Lutheran Church of America; the Catholic Charities of Yakima -- Yakima, Washington; the Jesuits California Province; the Coalition of Episcopal Latinos.

As well as statements from Illinois state representatives, Texas state representatives, Cook County commissioners, an additional Texas state representative.

The National Immigration Law Center; the National Immigration Forum, the American Civil Liberties Union; the Asian-American Center for Advancing Justice; the American Immigration Lawyers' Association; the Anti-Defamation League; CASA (ph) Oregon, Coalition for Human Rights out of Los Angeles; the Colorado Immigrant Rights Coalition; Farm Workers' Justice; the Hispanic Association of Colleges and Universities; LULAC of Syracuse; the Muslim-American Society; Immigrant Justice Center; One America; Racine (ph); Dominicane (ph); and the Wind (ph) Action for Racial Inequality.

GALLEGLY:

Without objection, they will be made part of the record of the hearing.

And with that, I will yield to the gentlelady for her questions.

LOFGREN:

Thank you very much, Mr. Chairman.

I have many questions, but first, let me just say that it's -- I think it is helpful to have this hearing. But there are a variety of studies and analyses available to us. And one that has just been released, within the last few weeks, is an analysis by Bloomberg Government. And this is the conclusion that the Bloomberg analysis made.

Although E-Verify is free to the employer, it does cost employers to become ready to use the system. And one of the estimates is, from Bloomberg, is that most of the burden will go to small businesses. In fact, they estimate that if the E-Verify had been mandatory for all employers last year, it would have cost businesses \$2.7 billion on their end. And that most of that cost would be for small businesses.

In fact, Bloomberg estimates \$2.6 billion that would be borne by small businesses. For a variety of reasons. They may not have an Internet connection. They'd have to get one, training employees and the like.

Has USCIS involved the small business community in the analysis of what you're doing? And what have they told you?

BERTUCCI:

What we have done with small businesses, which today, in today's environment, 73 percent of our companies or employers are employers of under 100 people. So I realize there's various definitions of small, you know, and certainly a smaller shop is -- so we have 73 percent of our members, or our participants are small business.

We have actively engaged in outreach. We understand the concerns -- well, we believe we understand the concerns of small business. We're working very closely with the Small Business Association to do a lot of outreach with our community.

But so far, analysis, ma'am, no, I would not say we have done that kind of analysis.

LOFGREN:

Okay.

Turning to the -- to Mr. Stana -- and thank you for your years of service at GAO, one of our favorite organizations. Because you call it as you see it, whether we like it or not.

We've heard that the E-Verify rate is going down and that is -- that's good. However, if there are wrong decisions made through whatever error, it has real consequences for people.

And looking to your December 2010 report -- I mean, you indicated that American citizens could lose jobs over misspellings and the like.

We had an occasion to meet a young woman, Jessica St. Pierre (ph), who was a former telecommunications worker in South Florida -- born and raised in the United States. She lost a good-paying job because of an E-Verify error. And she tried for months to discover the error, to fix the problem, and she was unemployed, I mean, that whole time.

There was a -- the problem still hasn't been resolved and she had to accept a lower paying job because she -- because of this mistake.

I'd ask unanimous consent to enter her statement into the record.

But I would note that your report in December indicates that Privacy Act requests take an average of 104 days for a response to determine inaccuracies.

Can you talk about the challenges that workers like Jessica face and what procedures are in place when an American citizen loses her job, is fired because of a mistake?

STANA:

Yes. That's sort of the story behind the numbers, if you will.

You know, if you look at the growth statistics, 98 percent of work authorized, there's no problem. Of the ones who are not work authorized, another, maybe 0.3 percent, say, a third of a percent, eventually are work authorized through their queries.

But there are some -- either the employer doesn't tell them that they have a TNC or they have TNC and somehow they can't get it resolved in 10 days or they can't get to an office in 10 days and they receive a final notification through the system, and they don't get a chance to.

Oftentimes, an employee does not know where the source of the discrepancy is, whether it's in the SSA data set or if it's in a DHS database. That's where the 104 days comes in.

I also would note that when a final non-confirmation comes in, there is no right of appeal. And that's what may have happened in that particular instance.

So there are issues that would have to be worked out if this were to be made mandatory or somehow has a broader application. That doesn't mean that the system doesn't work for most people. It's just trying to make sure that these kinds of cases can be resolved to a satisfactory outcome.

LOFGREN:

Well, if you think about just extrapolating, if we were to make this mandatory across the entire American workforce -- let's say we're successful in getting it down to 1 percent -- we're not there yet -- that's a million Americans that could be fired or not get a job because of an error rate.

STANA:

And that's why, you know, we recommended and -- and as Ms. Bertucci said, they accepted that recommendation. We have to find a way to make it easier to find the source of the error. So that you separate those who are work authorized, whether they're legal permanent residents within EAD or they're U.S. citizens; to make sure that they can get a fair shake out of the system and that the system does what it's designed to do, check on work authorizations.

LOFGREN:

I see my time has expired.

Mr. Chairman, thank you for yielding to me.

GALLEGLY:

I thank the gentlelady for being conscious of the light.

She used to do that to me.

(LAUGHTER)

At this time I yield to my friend from Texas, Louie Gohmert for five minutes.

GOHMERT:

Thank you, Mr. Chairman.

One of the things that really has helped has been, as employers have signed on to use E-Verify -- and obviously you've talked about some of the strengths and weaknesses. But there seems to be a continuing lack of knowledge in the public sector about E-Verify.

And it seems like awareness and outreach seem to be the Obama administration's approach to getting people to sign on, and I have concerns about that.

What plan, specifically, does this administration have for pushing people to utilize E-Verify? So that we can have people legally here in jobs that should be used by Americans, without regard to race, creed, color, national origin, any of that, but just that they're legally here?

What's -- what -- hopefully, there's more than just open -- people will notice on the news and decide, "Oh, that sounds like a good thing"?

BERTUCCI:

Sir, at this time, we are using outreach to get to E-Verify.

GOHMERT:

And that's -- and it's a lovely word, but does that mean, "outreach"?

BERTUCCI:

OK. So...

GOHMERT:

Somebody stuck out their arm over at...

BERTUCCI:

No, sir.

We've had 400 different events that we've (inaudible) -- we do webinars. We reach out to the H.R. communities, to large associations, national conferences. With the Small Business Administration we're going throughout the country in different regions. We've done a number of things in the state of Florida, for instance.

But we are reaching out to the larger conglomerates or groups or organizations that represent various sectors, to include even the agriculture sector of the economy. So we're doing that kind of outreach.

Having said that, we agree with you. Our survey of non-users, we did have an evaluation, an independent evaluation, of the non use of the system, trying to figure out what we could do better. And most of those people said, they're not using it -- and it was 500 participants surveyed -- most of them did say they're not using it because they were never even aware of it.

So we have invested in a marketing campaign to try to get certain segments of the economy in high-population areas and so on.

But that's the kind of outreach we're doing. And we are, in fact, out there on the road and offering it in that way.

GOHMERT:

Well, and that -- and that sounds nice. And I know if you got 400 of these seminars, webinars planned that that will be helpful. But from my perspective, in the last two years, I've noticed that if it's things that are really important to this administration -- whether it's Obamacare, whether it's crap-and-trade (sic), whatever it is, there seems to be a whole lot of other things this administration does, whether it's carrots or sticks -- some might say the Chicago way of approaching, getting more people on board.

And I'm just wondering if this is really that important -- I'm -- I get the impression from your written testimony -- I was here late -- but from your written testimony, you see this as a very effective tool. I do too.

I -- but it just seems like if the administration itself were really on board, there would be some carrots and sticks to drive employers to this; so that we have people legally here that are actually in those jobs, in this time of high unemployment. And it takes care of a lot of other problems we have from people illegally here taking jobs away from Americans, people that are supposed to be here.

Has there been any discussion with the White House about an approach that would provide real carrot and stick instead of just the awareness program?

BERTUCCI:

Not at this program level. The secretary has said that we are -- she is absolutely supportive of this program and wants to build the culture of compliance with employers.

GOHMERT:

Yes.

But you understand? I mean...

BERTUCCI:

I understand.

GOHMERT:

I've been six years and I've picked up on, unlike when I was on the bench, people said what they meant. A lot of times, when people say, "Yes, we're having meetings about it," it means, "This is going nowhere."

And so I would encourage you, as my time is running out, please push and insist for more than just awareness campaigns.

I mean the Bush campaign had awareness campaigns. The president was very vocal in supporting it. But still, we got too many employers that have never heard of it and are not driven to go there.

I thank you for your time.

(CROSSTALK)

GOHMERT:

I yield back.

GALLEGLY:

The gentleman -- the full committee ranking member, Mr. Conyers?

CONYERS:

Thank you, Mr. Chairman.

I want to commend Ms. Bertucci for her candor in -- in conceding that this is still in the developmental stage and there are things we've got to fix.

And I wanted to commend Mr. Stana for talking about employer complicity in the immigrant labor, getting around hiding the fact that they are immigrant labor. And I thank you for that part of our discussion.

With Judge Gohmert, I agree with you. I think that the administration may not be as fully behind this as their press releases might -- might say.

GOHMERT:

Would the gentleman yield momentarily?

And I'm not meaning to pick on this administration, because it's following E-Verify from the last one. And -- and I would acknowledge that as well, without...

CONYERS:

But let's face it, out of the first hearing on this subject and even this one, would it be unfair for impartial witnesses to come to the conclusion that a number of us here on the committee have, that E-Verify just isn't, right now, ready for prime time?

I mean, how on Earth can we talk about the administration making this mandatory on every employer in the United States of America and we haven't any evidence of how it's really working? That's what you've told us here, Mr. Bertucci, this morning.

Why don't we slow down a bit and get some actual working evidence or get some more rigorous proof that this is working?

I like the slide show this morning. I can't -- I couldn't see anything because I don't have my glasses on. But I guess it was very impressive. People were nodding and so forth.

But, look, with all the things we have to do, what's the big rush?

Now between both of you experts, nobody has talked about the reform that's necessary in addition to the enforcement. You keep talking enforcement, enforcement, enforcement. Have you ever heard of the labor movement's comprehensive immigration reform package that they put out in April 2009?

Can I send it down for you to take a look at it?

BERTUCCI:

Sure.

CONYERS:

OK.

Take it down.

And if you say you haven't, I won't be surprised. And I won't hold it against you.

Neither of you mentioned anything about the reform part that I've been harping on all morning here.

Doesn't that -- don't you see that just enforcement alone, even if it were flawless -- let's assume E-Verify worked, it still wouldn't change anything.

So what's so complex about that?

What do you have to say about, Stana?

STANA:

Well, I would say this.

The subject of our report was the E-Verify system, what's working, what's not. And the -- I guess our answer would be there's some good news and there's some not-so-good news.

And this is a tool that employers can use, obviously, to determine whether the employer -- the employee and they themselves, by extension, are in compliance with immigration law, OK?

Now, the extent that you make that mandatory for all employees or to certain sectors of the economy or certain employers -- business size, that's a public policy decision. That's not really our decision to make.

So what we're trying to do, I think, is to give you some information and analysis that would help you make that decision.

CONYERS:

And we're grateful for that. And I'm glad that you didn't come here this morning to tell us that we ought to make it mandatory. I'm glad to hear.

Now Chairman Gallegly himself, because of what happened in -- with the other body isn't that thrilled with the -- I mean, they didn't fix it in the right way. And we've still got our work cut out for him, and I appreciate him pointing that out as well.

But my time's up.

Thanks a lot.

GALLEGLY:

I thank the gentleman.

Mr. Ross?

ROSS:

Thank you, Mr. Chairman.

Ms. Bertucci, I am from Polk County, Florida, which is -- growing up there, it was known as the Citrus Capital of the World. And being very cognizant of that, I understand the labor needs that we have there. In fact, we have to rely significantly on immigrant labor.

But we also find with some of our growers and our harvesters and our other producers in that industry, the government programs, like the H-2A program, with an adverse wage rate, is a disincentive to hire through an H-2A program or any other government program.

And now as we look at the E-Verify program -- and you mentioned earlier that you had made some strides, I guess, in the state of Florida with E-Verify. Could you just tell me what you mean by that?

BERTUCCI:

I was responding to outreach. We have gone into various states to outreach to those communities. That's what I was talking about.

ROSS:

Have you seen an expansion of the use of E-Verify in the state of Florida?

BERTUCCI:

Yes.

ROSS:

Significantly?

BERTUCCI:

I cannot -- yes, we have, but I don't know if it's significant as compared to other states.

ROSS:

I'm a strong proponent of E-Verify.

BERTUCCI:

Yes.

ROSS:

And I think it's something that we ought to enhance, expand and use more efficiently. But, again, when I look back at my growers and my harvesters, I asked the question what incentive -- and I think this is what Judge Gohmert was talking about -- what incentive is there for an employer?

Is there a safe harbor that when they knowingly -- or unknowingly hire somebody who is not appropriate, is there a safe harbor to prevent them from -- immunity or...

BERTUCCI:

Well, without getting into the criminal prosecution area, because I'm not a lawyer and I'm not on the ICE side of the house. Having said that, I believe as the statute is written, it's -- it allows some recognition of the fact that the employer's trying to do the right thing by participating in the program.

However -- obviously, if there's a really bad actor or an egregious employer, that for some reason is breaking the law, I would assume that a prosecution and/or investigator would look at that.

Having said that, presumption is the employer's trying to do the right thing -- I have -- by participating in this program. And that's always our assumption going in on these voluntary programs.

ROSS:

I think anything that we can do to incentivize their participation is going to be good.

BERTUCCI:

Yes. And it's the tools, as Mr. Stana -- it's the tools for them to help comply with the law.

ROSS:

Exactly.

Now, Mr. Stana, you commented in your report, on page 6, that there are limited resources being put toward enforcement of employer compliance. What additional resources would you say the DHS may need in order to accomplish the adequate enforcement?

STANA:

I don't have a figure for you. I know this has been a long-standing problem with the old I-9 process as well.

So it's, I think, prior immigration reform legislation put the increases to ICE in the thousands, not in the tens or hundreds.

I would like to make one comment on what Ms. Bertucci said about not being a safe harbor, because I think it's an important point.

ROSS:

Yes, sir.

STANA:

Employers should not read participation in E-Verify as inoculating themselves.

ROSS:

Right. No, I...

STANA:

What E-Verify does, is, it creates a record that they submitted a name and they got a response. They got a -- they had a look at a photo, through the matching tool, and they said the person was who was in front of them. So it creates a record.

If there is any worksite accidents, they may get some -- some accommodation because they're a voluntary participant, but they're no means inoculated if the record shows that this person has -- had a good idea by virtue of the information that E-Verify provided that the person before them was work authorized or not.

And that gets to the point that I raised with Ranking Member Conyers, that all too often, employers have been found to be complicit in these things.

ROSS:

Right.

STANA:

We went to Colorado, North Carolina and Arizona and talked with workers and with business owners on their experience with this. And we heard the same thing: that it's a tool, it has some flaws, it had some really good things; they like it for various reasons. But there's definitely mixed views on it.

ROSS:

What -- going back to the additional resources that you referenced in your report, have you made any requests on this administration for those resources?

STANA:

You mean how many more it would take?

ROSS:

Yes. How many more would it take, and what additional resources?

When you -- when you reference that you have limited authority to impose penalties that you would need -- you would need additional resources in order to achieve the adequate enforcement, have you made a request on the current administration for additional resources? It would have been a...

STANA:

No. It would be from GAO. That wouldn't be with our -- in our bailiwick. That would be up to ICE and, by extension, DHS to ask for those resources.

ROSS:

Would you have any recommendation as to what those resources would be or should be to additionally allow them to do their enforcement?

STANA:

No, there is -- we would have to -- actually that's the administration's responsibility, to identify the resources they need, not us.

ROSS:

Yes. But you acknowledge that they don't have adequate resources.

STANA:

We don't have the resources now to -- to enforce...

(CROSSTALK)

ROSS:

Fulfill (inaudible) enforcement obligations.

STANA:

... enforce the I-9 system, let alone the E-Verify system.

ROSS:

OK.

Thank you.

I yield back.

GALLEGLY:

Mr. Pierluisi?

PIERLUISI:

Thank you, Mr. Chairman.

Sitting here today, I have to admit that I am -- I'm troubled. I'm troubled about the possibility of expanding, or even worse, making mandatory, this E-Verify program. And I'll explain why.

Simple. I have two concerns.

The first one: What are we doing with the 8 million estimated undocumented workers out there? Does anybody think that just by expanding this that these workers will disappear?

All of them want to make a living, and you cannot blame them for that. And they'll find a way, one way or the other. There is an underground economy, and we don't want to spur it or to encourage it more than it already is existing.

And the problem with expanding E-Verify without also dealing with the immigration laws as a whole, on a comprehensive basis, is that you're simply -- this is like a Band-Aid.

It is one thing to have a voluntary program like this to allow employers -- to assist employers in verifying the documents of their workers. That's fine. But it is another to simply pretend that by making it mandatory, all of a sudden 8 million people out there working will disappear as if it -- this were -- this were magic.

I noticed that in the statement made by Director Bertucci, she says that she hopes that any changes to the E-Verify program, I quote, "will be considered as a part of comprehensive reform to our immigration laws."

So the first question I have is, do you agree with the premise of my concern that just dealing with this on its own is not going to solve the immigration issue our nation faces?

BERTUCCI:

Sir, I think what that is, is a public policy decision that I would defer to the department to respond to.

PIERLUISI:

Is it your hope that we deal with this issue on a comprehensive basis?

BERTUCCI:

I don't get to hope in this job.

(LAUGHTER)

PIERLUISI:

I see.

But did I quote -- did I quote your statement correctly?

(CROSSTALK)

BERTUCCI:

... the administration stands behind comprehensive immigration reform.

PIERLUISI:

I like hearing that.

OK. Another concern I have is that by your own admission, there are errors. Errors are being made as this program is being implemented. There's been misuse by the employers as this program happens.

At one point today, I think you've even said that you've been -- not you personally, but the -- the center has been clumsy in trying to monitor this -- the employers' compliance. And I even noticed that the chairman is not happy with the compliance efforts on your part.

So -- and let me add one that hasn't been talked about here, which is discrimination. I for one -- I saw that there is a 20 times -- 20 times higher chance to have an error when the individual involved is foreign born.

If somebody comes from abroad -- and I got this figure from -- let me tell you (inaudible) because I see that -- Westat is my source for this. It has done a study and they determined that there's a 20 percent -- 20 times higher chance that if you're born abroad, then there could be a problem. You could be legally in this country. You could be even documented. And the ranking member of this subcommittee already pointed out to a particular case.

So that's my second question. What are you doing? Are you ready, like the chairman -- or the ranking member of the full committee said, are you ready to really expand this like some people are proposing?

BERTUCCI:

OK. Sir, the -- first of all, the system can handle up to 60 million queries. We know that.

We know, today, during last year, we handled 16 million, and our accuracy rate in that Westat study was 96 percent.

Having said that, it also acknowledges what GAO found, and we have undertaken a study. And what the name reference had to do with is the things that Mr. Stana talked about.

And the systems that are controlled by DHS, to a great extent, if their records -- not only DHS, our partners -- well, other partners, but mostly DHS, I should say, CBP, us, and so on -- depending on how names are entered into records, over a long period of time, that's where we may have possible -- possible problems with names.

Having said that, on contacting us, we are responding to those now. We -- through the improvements we've made -- people aren't going and being pushed off to, say, the Social Security Administration where they have to show up. A great number of the people with a DHS record mismatch are coming to us. We are responding to those within 24 hours, and we are working with that person.

No one -- no one -- one person being fired wrongly is too many people. No one is being fired under those circumstances. We work with the people and we will gather the information.

It's difficult. We're working with old systems. We acknowledge that. And those are some of the things we want to do to improve and make sure that we're building up our status verifiers. We have a group sitting in Buffalo. We're going to have a group in Nebraska. We have them in Los Angeles and New York. And their job is every day working with people to ensure that the records match -- and, you know, if there was that kind of a mismatch with names. And that's what's happening.

And we have a study -- another study, we'll get by the end of this year, fiscal year, on essentially those kinds of things, the difficulties with foreign names, foreign-born names, so that we can see what we can do to improve the system.

PIERLUISI:

My time is up.

GALLEGLY:

Thank you very much, Mr. Pierluisi.

Ted Poe?

POE:

Thank you, Mr. Chairman.

Thank you for being here, both of you.

I am a believer, based on my background as a judge, in the rule of law. And America's the most generous nation on Earth for its allowing people to come here. We have an immigration policy of -- that is very liberal and -- coming here the right way.

I believe, basically, though, you come here legally or you don't come. We all know the reasons that people say why they come here. I do not believe everybody that comes into the United States illegally is coming here to do work Americans won't do. I think that's just a fiction.

But -- so if we are going to follow the rules and follow the law, then people who are here illegally need to understand -- whatever the political correct term to call those folks, they are still here illegally, and they need to come the right way.

E-Verify is a way to make sure the employers are hiring folks that are legally here. It is a frustration for many employers to make sure that they want to hire people that are here legally. And I think the E-Verify is a way that helps out employers, but also follows the rule of law.

Ms. Bertucci, I was in Houston last week and talking to some of your ICE agents about some of the issues that they face with the tremendous influx of people and problems that they have. And I just want to thank you for the work you're doing. I admire the work that the agency and that the division -- district in the Houston area is doing a good job.

How long as E-Verify been around?

BERTUCCI:

The pilot began in 1997, before I -- the pilot began way back as a basic pilot in 1997.

POE:

Fourteen years, is that right?

BERTUCCI:

Yes.

POE:

OK.

Eleven percent of the businesses use E-Verify. After 14 years, we still only have 11 percent. Can you help me out, why that is? Do you know?

I mean, why are so few -- I mean, that's 11 percent after so many years. It's going to take us -- if we keep adding 10 percent in that length of time, it'll be 150 years before we have 100 percent.

So why have so many been reluctant to use it?

BERTUCCI:

I believe that the program's growth is in the most recent years. When the program began, there were obvious challenges on the information technology front.

We're growing each and every year. We more than doubled the last couple of fiscal years. And the program is voluntary. So that's how the growth has been.

But it's been a steady pace: 1,300 new employers sign MOUs with us every single week. So we keep on growing the program.

POE:

How many false positives do you get a year?

BERTUCCI:

False positives?

POE:

In other words, you're -- the system...

BERTUCCI:

Right.

POE:

... checks out so-and-so and it's a -- it's not correct. And so this person may be an American citizen...

BERTUCCI:

Absolutely.

POE:

... as Mr. Pierluisi was talking about earlier.

BERTUCCI:

Yes. Thanks.

One thing -- this is an opportunity to talk about the most-often talked about statistic in this program, when people say there's 40 -- we've got 40 -- 54 percent error.

That was -- that statistic came out of the Westat 2009 report. That same report said, the system is overall correct, accurate, 96 percent of the time.

The report looked at a smaller segment of the population in the system. It modeled that based on a 6.2 percent illegal or -- I'm sorry, unauthorized workforce in the country. It was very extensive statistics -- my husband's the math major, not me.

But having said that, they looked at that model and they applied that model, and said we should have found 6.2 percent people as unauthorized to work.

We found 2.9 percent. That is where they believe -- but they do not look at the actual records, they just assessed that based on the model.

That's...

(CROSSTALK)

POE:

So your opinion -- it's 2.9 percent -- is a fair statement or not?

BERTUCCI:

No.

I don't know that we have a good number on false accurate (ph). The record on -- from Westat was that that error rate at the time related to a total of 4 percent run in 2009.

But since then, we have made improvements. And our most recent 2010 -- and as Mr. Stana said, it may be an anomaly because we have had the federal contractors come on. But Mr. Stana has recognized 5.4 percent decrease in our tentative non-confirmations. And we're now at a 1.7 percent initial mismatch.

We then find three-tenths of a percent of those people resolved, authorized to work; and the other, 1.4 percent, found unauthorized.

POE:

Last question, if I may, Mr. Chairman.

(CROSSTALK)

POE:

Excuse me. I'm (inaudible) out of time.

BERTUCCI:

OK.

POE:

That -- you're an employee, a potential employee. You go to business and it comes up E-Verify, as a false positive, says you're here illegally. What are my options as that worker?

BERTUCCI:

As the worker?

POE:

Yes. It comes up a false positive saying that I'm illegally in the country, and I'm not.

BERTUCCI:

I think Ms. Lotspeich demonstrated -- you may not have been here, so I apologize.

You have the right to contest that tentative non-confirmation. At that point that case is held in abeyance. Eight days you visit -- eight days, you either visit the Social Security Administration or call us. We work with you. And we will hold that case open if we're working with you until such time we resolve that data mismatch.

LOFGREN:

Would the gentleman yield?

POE:

Yes.

LOFGREN:

Because -- because the GAO report actually indicates, theoretically, that's what's supposed to happen.

BERTUCCI:

Yes.

LOFGREN:

But there are plenty of times when the employee is never notified, in violation of what is supposed to happen, and they can't fix it. And they get fired even though they're an American. Isn't that correct, Mr. Stana?

STANA:

Yes, if I could straighten out the numbers a little bit -- because I think there's a lot of numbers flowing (ph) around here.

(CROSSTALK)

Of the 100 percent of people who are -- who go through the system -- let's say 97.5 percent to round it out -- are deemed work authorized instantaneously.

Of the ones who are not authorized instantaneously, about 0.3 percent of them get it resolved within a -- 48 hours or so. So you're really dealing with maybe 2.3 percent to 2 percent of people who have this problem. It is a problem.

Now, getting to your earlier question, you asked how many false positives there are. These are false negatives that we're talking about.

POE:

OK.

STANA:

People who are inappropriately told that they're not authorized to work and they may be. And that's the issue you're talking about.

The false positives are at about 3 percent, 3.5 percent according to Westat, which means, "I'm not authorized to work, but somehow the system either through identity theft or employer compliance with me getting a job inappropriately," that's what that figure is.

Now, when you throw around all these statistics, it gets easy to get lost in the numbers. But the -- when you start matching the number sets up -- and it's hard to do because it's not exactly the same point in time and it's not exactly the same data set -- but you start getting to the point where getting much further down in the false negatives is going to be difficult to do.

I mean, it's important to do it because you have people like you talked about, Ms. Lofgren, who are -- who are getting a bad shake out of the system. So you don't want to lose that intent. But it's getting tough, because you're ratcheting this down into the below 2 percent range.

The false positives, I don't know if we're ever going to get totally on top of that without having a better way to address the resource and enforcement question.

POE:

OK.

STANA:

It's not a matter of, you know, when or how, or is -- that's your call and what conjunction you do it. But that's kind of the landscape here.

GALLEGLY:

Thank -- thank the witnesses today.

This is going to be an issue that we're going to be dealing with a great deal in this Congress.

I'd just like to close by trying to respond to my good friend -- and he truly is my good friend and my neighbor for many years, the ranking member, Mr. Conyers, and his statement, "Why rush?"

Well, I would just like to answer that by saying that this issue didn't start yesterday or day before yesterday. In fact, after IRCA in 1986, we thought this problem was going to be solved because we had a one-time amnesty. I guess that was the 1986 version of comprehensive immigration reform. And that this problem would go away because we would have an enforcement mechanism we never enforced.

Then we fast forward to 1996. That's still 14 years ago. And that's when we came up with this new concept of E-Verification.

Now, 14 years has passed -- and I've been working on it for 14 years, so I don't think that I've really been rushing to it. But if there was ever a need to do something quickly, when we have 14 million Americans that aren't working today, I think that they deserve to be put at the front of the line.

And I hope we can all work together. John, you're my friend. And I know we can work together and maybe differ without being personal about it.

I respect your friendship.

And with that, we will adjourn the meeting.

Thank you.