American Immigration Council
E-Verify Press Briefing
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Statement of Marketa Lindt

My name is Marketa Lindt. I am an attorney with the Chicago law firm Sidley Austin. In my practice, I counsel companies – large and small – on complying with the laws on I-9s, E-Verify and other business immigration issues.

I will focus on what mandatory E-Verify would mean to employers. But before I talk about mandatory E-Verify, let's talk for a moment about E-Verify as a voluntary program, as it currently exists.

In my legal practice, I work with some employers that have chosen to use the government's E-Verify program. The government has offered this tool to employers to assist them in the employment verification process. Some employers feel that despite the resources they need to invest to get E-Verify running in their company, and despite the problems that can arise when using E-Verify, that it's a useful tool for the company in its efforts to comply with the requirements of the I-9 laws.

But for many employers in the U.S. market place, E-Verify is not a good fit.

First, many employers recognize that they do not have the resources to train their staff and to maintain the E-Verify system for their company. Although the government always describes the E-Verify program as "free" for employers, anyone who runs a business knows that any process that takes staff time to implement costs the employer money.

In fact, the recent Bloomberg study states that if E-Verify had been mandatory for employers last year, it would have cost US employers $2.7 billion. And, as the vast majority of U.S. employers are small businesses, almost all of that $2.7 billion price tag would have been shouldered by our country's small businesses.

At a small business, the person who is completing I-9s is often also interviewing job candidates, keeping the books, answering the phones, doing payroll, and performing any number of necessary tasks to keep the business running. Adding E-Verify to that lists of tasks would require an investment of resources that many small business don't have to spare.

Second, many employers do not want to deal with the error rates in the E-Verify system. The error rate affects a business when it runs a legitimate, work-authorized employee through E-Verify, and at the initial stage of inquiry, the system erroneously states that the worker is not authorized. This is call the tentative non-confirmation, or TNC. An erroneous TNC typically happens because there is an error or discrepancy in the individual's documents or in one of the government databases.

Now, I think everyone can agree that E-Verify has had some success in reducing what used to be some fairly shocking error rates in the system. But even if we accept the conservative estimate of 0.8% erroneous tentative non-confirmations from the recent Westat study, that still translates to 600,000 workers per year having to go through the steps to resolve a TNC based on an error in the government's databases. This error rate for legitimate, work-authorized workers has been estimated to cause U.S. businesses 1.6 million hiring delays per year.

And when a company receives TNC on a new employee, resolving it is not just a hassle for the employee, it also costs the business. When the E-Verify system issues a TNC for a worker, it does not state which of the employee's documents contains the error or discrepancy. So the employee may need to visit several government agencies to resolve the issue. Sometimes this means that the employee needs to take off time to travel hours to another town where the government office is located. In fact, the studies show that half of the workers who are required to resolve TNCs have to take one or more days off work, which costs money, both for the business and the employee.

Jessica, who just told her story, is an example of just how much the E-Verify system can go wrong and inflict significant hardship on both the workers and the companies for which they work.

Third, in addition to the implementation costs and the costs of erroneous TNCs, employers who use E-Verify also suffer productivity losses due to the long time that the government takes to resolve TNCs. According to the studies, it takes the government an average of 7-12 days to resolve TNCs. Although almost 90% of TNCs ultimately result in final non-confirmations – in most cases because a worker is not authorized to work in the United States – the employer is required to employ the worker until the government resolves the issue.

The absurd result is that if an unauthorized worker applies for and is hired for a job, the employer must continue to employ that worker until the government issues the final non-confirmation, paying and training that worker, only to be told to terminate the worker 7-12 days later. I work with a manufacturing company that uses E-Verify and that operates in an area where a high rate of applicants present documents that ultimately fail E-Verify. It is difficult for me to explain to the company why the government forces it to hire, train and pay each unauthorized worker almost $1000 in wages before forcing the employer to fire the person.

Nationally, this problem costs U.S. employers 14 million work days of lost productivity per year, for time that employers are forced to employ unauthorized workers while the government slowly works its way through its own systems. And these delays can only be expected to increase if many more employers are forced to use a mandatory E-Verify system.

Therefore, the E-Verify program is clearly not free to U.S. businesses. Again, E-Verify can be a useful tool for those companies that determine that the costs of implementing the E-Verify program justify the benefits that the company will receive from the program.

But we have to view the costs of E-Verify in the reality of today's economic environment. We are currently in the middle of a painful recession where many of our country's businesses are seriously struggling to keep their doors open. At a time when we should be stimulating economic growth, it is bad government policy to impose on all businesses a government program that will cost the employers money to implement, to maintain and to troubleshoot. This is not the time to place another government burden on U.S. business, especially not the small businesses that employ such a large percentage of our U.S. workforce.