

WORKING HANDS

LEGAL CLINIC *Bringing Justice to the Community!*

**Testimony of Christopher J. Williams, Esq.
Director of the Working Hands Legal Clinic
before the**

**U.S. House of Representatives Judiciary Committee
Subcommittee on Immigration, Citizenship, Refugees, Border Security, and
International Law**

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Good morning. My name is Chris Williams. I am the Executive Director of the Working Hands Legal Clinic in Chicago. Our Legal Clinic assists vulnerable, low wage workers confronting the most abusive and exploitative practices in the workplace, everything from stolen wages to discrimination. First, let me thank you for your invitation to speak before this distinguished committee.

I am here today to express our organizations concern about proposals to expand the use of Electronic Employment Verification Systems (EEVS), such as the E-Verify program. The E-Verify program, currently a voluntary program, requires participating employers to verify whether newly-hired employees are eligible to work in the United States through the use of an internet-based program. When a participating employer enters a worker's basic identifying data into the E-Verify system, the data is checked against databases maintained by the Social Security Administration ("SSA") and the Department of Homeland Security ("DHS"). The SSA database is supposed to tell whether a particular worker is a U.S. citizen or work-authorized immigrant. If a worker is not a citizen and does not appear on the SSA database, the DHS database is supposed to tell whether the worker is authorized to work in the United States. The E-Verify program is being touted as an effective means of eliminating employment by undocumented immigrants but too little attention is being paid to the negative impact the program is having on U.S. citizens and work-authorized non-citizens, a problem that will only be exacerbated by expansion of this or other EEVS programs.

The E-Verify program, formerly called "Basic Pilot", has been plagued by serious problems since it was first introduced in 1997. First, this EEVS program relies on government databases that have unacceptably high error rates, misidentifying work-authorized workers as not employment-eligible. Specifically, a December 2006 report by the Office of the Inspector General for the SSA estimated that 17.8 million of records contained in the SSA database, the primary source of information for the E-Verify program, contain discrepancies related to name, date of birth, or citizenship status.¹ Such discrepancies result in a "tentative non-confirmation" of eligibility for employment under the E-Verify program. According to testimony from the GAO to a 2008 subcommittee of the House Ways & Means Committee, the E-Verify program was not able to automatically verify the work authorization of approximately 8 percent of workers whose information is submitted to E-Verify. This is the same error rate that was found in the Westat report commissioned by the Department of Homeland Security and released in September 2007.² The worker then becomes responsible for resolving the issue with Social Security or with DHS. If the worker does not resolve the problem quickly, he or she faces termination. When the E-Verify program's databases fail, U.S. citizens and work-eligible immigrants pay the price as they are put on what essentially amounts to a "no-work list."

Employer misuse or non-compliance with the E-Verify program rules is a second and, in my view, more insidious problem. The 2007 Westat evaluation of Basic Pilot/E-Verify found that the rate of employer noncompliance with the program rules is “substantial” and “diminishes the effectiveness of safeguards designed to protect the rights of work-authorized employees who obtain erroneous tentative non-confirmations.”³ The report found that “the rate of employer noncompliance [with the program rules] is still substantial.” Specifically, employers engaged in prohibited employment practices, including: (1) pre-employment screening; (2) adverse employment action based on tentative non-confirmation notices; and (3) failure to inform workers of their rights under the program. And the effect is particular hard on work-authorized foreign-born workers, since, as the Westat report points out, these workers are 30 times more likely than U.S.-born to receive erroneous tentative non-confirmations (nearly 1 in 10) initially receive tentative non-confirmations).⁴

I believe the case of Mr. Fernando Tinoco, one of my clients, is illustrative of this problem. Mr. Tinoco is an immigrant from Mexico and became a citizen of the United States in 1989. He applied for a job with an employer in Chicago that used the E-Verify program. After submitting his information through the EEVS program, the employer received a tentative non-confirmation notice. Mr. Tinoco challenged the tentative non-confirmation and was required to go to the SSA himself to clear the matter up. But even after SSA acknowledged the error and provided Mr. Tinoco with the necessary documentation, the employer refused to employ Mr. Tinoco.

In Mr. Tinoco’s case, we were eventually able to resolve the issue because his employer had informed him of the tentative non-confirmation from the E-Verify program and he was able to successfully challenge the determination. But, according to the Westat report, 47 percent of employers, nearly half, had pre-screened workers through E-Verify system and, unfortunately, there is no way to account for how many employers, when faced with a tentative non-confirmation, simply choose not to hire the person.⁵ There is simply no way for a potential employee to know this and no effective safeguards to prevent this practice.

My experience with employers’ reaction to “No-Match” letters from the SSA tells me that this type of problem is already underreported and will only be exacerbated by expansion of the E-Verify or other EEVS program. While SSA No-Match letters are different than the E-Verify program, both rely on the same flawed SSA database. (A No-Match letter is generated by SSA when a worker’s identifying information remitted to the Social Security Administration does not match the information contained in the SSA database and, if not deliverable to the individual, is sent to the employer.)

Our legal clinic has had to respond to firings of literally thousands of workers in and around Chicago over the past two years based on misapplication or misunderstanding of the E-Verify program and/or SSA No-Match letters. One employer who fired 30 Hispanic employees initially told me that the terminations were based on receipt of a SSA No-Match letter, but later, after the employees had requested copies of the letters under Illinois law, admitted there were no such letters, stating instead that there were other ways to check the social security numbers of his employees. None of the affected employees was told the basis of the termination, much less given the opportunity to challenge any tentative non-confirmation. Another small employer of 50 homecare health workers fired fully half of her employees. When challenged on the basis of the terminations, she told me “Well, I’ve been reading the newspaper and I thought that is what I was supposed to do. I thought I had to get rid of anybody who might be working illegally.”

There are over six million employers in the U.S., many of which are small, have no human resource staff and limited resources to get access to legally accurate information and even less time to become compliant with a mandatory EEV system. Many employers will be ill-equipped to be the frontline of immigration enforcement and by expanding the use of an EEVS system, the law will be applied in an uneven and, too often, unfair way. Coupled with the inaccuracies in the databases underlying the EEV system, the inevitable result will be that an unacceptably high number of legally authorized workers will lose their livelihoods. Simply put, employers should not be charged with the responsibility of enforcing immigration law through these EEV systems. Most do not want to expend the time and resources to do so, and have neither the expertise nor tools to do so correctly or legally.

¹ CONGRESSIONAL RESPONSE REPORT: ACCURACY OF THE SOCIAL SECURITY ADMINISTRATION’S NUMIDENT FILE (Office of the Inspector General, Social Security Administration, Dec. 2006).

² FINDINGS OF THE WEB-BASED BASIC PILOT EVALUATION (Westat, Sept. 2007).

³ *Id.* at note 3, at xxi.

⁴ *Id.* at 71 – 77.

⁵ *Id.* at 71.