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**COMMENTS IN OPPOSITION TO H 5106 – RELATING TO LABOR AND LABOR
RELATIONS
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The ACLU continues to oppose mandatory participation in the E-Verify program. E-Verify was intended to be, and largely still is, a voluntary program; given the lasting concerns with E-Verify, outlined below, requiring its use will likely exacerbate discrimination and will prevent lawful workers, including U.S. citizens, from securing work.

E-Verify Databases Contain Millions of Errors

In 2006, the Investigator General estimated that 17.8 million Social Security Administration (SSA) records contained discrepancies related to name, date of birth, or citizenship status. Of these flawed records, 12.7 million were for U.S. citizens. (To our knowledge, this is the most recent information available.) Errors and outdated information are also prominent in the databases of the Department of Homeland Security (DHS) and the U.S. Bureau of Citizenship and Immigration Services (USCIS). The databases directly accessed by E-Verify are therefore riddled with inaccuracies about the eligibility of workers.

Though a 2007 Westat study commissioned by DHS found accuracy improved, it noted, “[m]ost importantly, the database used for verification is still not sufficiently up to date to meet the IIRIRA requirement for accurate verification, especially for naturalized citizens.” In December 2010, the Government Accountability Office (GAO) found that, “the accuracy of E-Verify continues to be limited”.

A 2009 Westat study also submitted to DHS further noted, “Employers in states that require the use of E-Verify for all or some of their employees have higher erroneous TNC rates than employers in states with no requirement to use E-Verify.”

Foreign-Born Citizens and Lawful Workers Are Negatively Impacted

As a result of these database errors, foreign-born lawful workers are 30 times more likely than native-born U.S. citizens to be incorrectly identified as not authorized for employment. Almost 10 percent of foreign-born citizens are initially told they are not authorized to work.

According to the GAO, 76 percent of name mismatches in 2009 affected U.S. citizens, and numbers of mismatches are likely to increase if E-Verify were to be required. Individuals of Hispanic or Arab origin, are more likely to receive a TNC as a result of a name mismatch.

E-Verify Inaccurately Authorizes Workers

Although the purpose of E-Verify is to prevent unauthorized workers from gaining employment, the 2009 Westat study found that “primarily due to identity fraud, the inaccuracy rate for unauthorized workers is approximately 54 percent.” More than half of the workers E-Verify was designed to exclude are thus able to gain work approval by the system, even as lawful workers are excluded.

Attempts to modify E-Verify to exclude these workers are costly and unlikely to be effective. Although a Photo Screening Tool was added in 2007, the Westat study found this tool had “an extremely small impact on the inaccuracy rate for authorized workers,” and “slightly *decreased* the inaccuracy rate for unauthorized workers.” (emphasis added) The GAO in 2011 noted, “identity fraud remains a challenge.”

Unrealistic Timeframe to Resolve Tentative Nonconfirmations

Whether because of transportation issues, child care issues, a second job, or myriad other reasons, new hires may not be able to visit a local SSA office within the eight day allotted time frame to resolve a tentative nonconfirmation (TNC). For some, resolving a TNC involves taking time off from their new job to fix the database error. For others, resolving a TNC may require the new employee to obtain any other official documents necessary, amounting to more missed work in the first few days of employment. Additionally, not all SSA errors can be resolved in the ten-day time frame E-Verify permits for employers to re-run new employee information. The 2010 GAO report anticipates that the wait time involved with resolving SSA errors will only increase if E-Verify participation is mandated and increasing numbers of individuals seeking to resolve their TNC flood the local SSA offices, taxing their limited resources.

Employers Use E-Verify to Discriminate

A September 2007 evaluation of E-Verify found that forty-seven percent of employers pre-screened job applicants even though the practice is directly prohibited by the E-Verify program. As noted above, Hispanic and Arab individuals are more likely to receive a TNC because of name mismatches. These errors in the system lead to suspicion and race-based discrimination of applicants who are perceived to look and sound foreign; in anticipation a TNC, qualified legal workers are denied employment because of their name, their accent, or their skin color. Disturbingly, the evaluation found that 9.4 percent of employers never notified potential employees of their TNC, denying them a chance to resolve the error, or even to know that one existed. Twenty-two percent of employers restricted work assignments because of a TNC, 16% delayed training, and 2% reduced the pay of the new hires as a result of their TNC.

Self-Check Systems Are No Solution

In February 2012, U.S. Citizenship and Immigration Services made available to all 50 states use of the E-Verify Self Check, permitting individuals to check their identifying information against SSA and DHS databases to determine whether they will receive a work authorization under E-Verify. In theory, this should give job applicants an opportunity to correct errors in the databases before receiving a TNC.

Unfortunately, this system is no panacea. In order to use Self Check, two things are critical: access to the Internet, and a credit history. Self Check is only available online; any individual lacking access to a computer is unable to perform a Self Check prior to E-Verify use. In 2011, a survey by the Pew Research Center’s Internet & American Life Project found that 22 percent of Americans do not use the Internet, and that Internet use is least likely among minority and low-income individuals – exactly those who are most likely to be affected by E-Verify and its accompanying flaws.

For those who do use the Internet, a credit, work or residence history is vital to the Self-Check process. In order to verify one’s social security number, passport number, or green card, an individual attempting Self Check must first answer between two and four knowledge-based questions culled from their credit history. The DHS Privacy Impact Assessment notes, “If there is not enough commercial identity verification information from financial institutions, public

records, and other service providers to generate two questions, the individual's identity cannot be authenticated and he will not be able to continue through E-Verify Self Check." Legal workers lacking credit information, such as young adults, those who do not have loans or credit cards, or those who are recently in the United States – again, those most likely to be affected by E-Verify – are unable to use the Self Check system. Individuals who have been victims of identity theft also cannot use Self Check. The Privacy Impact Statement further notes: "If an individual has placed a fraud alert on his credit file, the individual will not be able to authenticate through the IdP and consequently will not be able to use E-Verify Self Check." Self Check is therefore no solution to the problems of E-Verify; at minimum, a stronger database system and better system for appeals are critical before the mandatory use of E-Verify can be condoned.

Given the unemployment crisis occurring in Rhode Island, denying employment to qualified Rhode Islanders cannot be an option. Denying qualified Rhode Islanders employment because of their race, name, or accent can never be an option. Based on all of the above reasons, the ACLU opposes mandating E-Verify use in Rhode Island, and strongly opposes H 5106.

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