



TESTIMONY OF MOST REVEREND JOSE H. GOMEZ

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On

**The National Employer Electronic Verification System
(E-VERIFY)**

Before

The House Judiciary Subcommittee on Immigration Policy and Enforcement

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I am Jose H. Gomez, Coadjutor Archbishop of Los Angeles and Chairman of the U.S. Conference of Catholic Bishops' (USCCB or the Conference) Committee on Migration. I testify before you today on behalf of the USCCB Committee on Migration.

Before I begin, I would like to thank Subcommittee Chairman Elton Gallegly (R-CA) and Ranking Member Zoe Lofgren (D-CA) for permitting me to submit testimony before the Subcommittee on this important matter.

While today's hearing is on the question of whether the E-Verify system preserves jobs for American workers, my testimony before the Subcommittee will outline the Conference's position on proposals that some have promoted that would require the mandatory use of the National Employer Electronic Verification System (E-Verify).

In my testimony, I will recommend that prior to expanding implementation of E-Verify, Congress and/or the Administration should:

1. Prioritize and pursue comprehensive immigration reform – which includes, among other elements, the legalization of the unauthorized currently in the United States and the expansion of legal avenues for low-skilled workers to enter lawfully – in lieu of enforcement-only measures, including E-Verify, to address the issues of unauthorized immigration in the United States;
2. Significantly reduce error rates in Government databases that the system relies upon;
3. Curb opportunities for employer misuse of the system; and
4. Provide workers with a fair and meaningful opportunity to correct false positives.

The Role of the U.S. Catholic Bishops in the Immigration Policy Debate

Mr. Chairman, the issue of immigration is complex and elicits strong opinions and emotions from all sides of the public debate. It touches upon our national economic, social, and cultural interests and has been analyzed and dissected predominately in those terms. From the perspective of the U.S. Catholic Bishops, immigration is ultimately a humanitarian issue because it impacts the basic human rights and dignity of the human person.

The U.S. Catholic Church has a long history of involvement in immigration. The U.S. Catholic Church has a rich tradition of welcoming and assimilating waves of immigrants and refugees who have helped build our nation throughout her history. And, in 1988 USCCB established a legal services subsidiary corporation which currently includes 196 diocesan and other affiliated immigration programs with 290 field offices in 47 states. Collectively, these programs serve some 600,000 low-income immigrants annually.

The U.S. Catholic Bishops acknowledge the right of the sovereign to enforce its immigration laws. In the pastoral letter, *Strangers No Longer: Together on the Journey of Hope*, USCCB

recognized the right of the sovereign to control and protect its borders, stating: “we accept the legitimate role of the U.S. . . . government in intercepting undocumented migrants who attempt to travel through or cross into [the country].” The U.S. Bishops emphasized, however, that “. . . [w]e do not accept . . . some of the policies and tactics that our government has employed to meet this . . . responsibility.”¹

In *Strangers No Longer*, the U.S. Bishops made clear that despite the sovereign’s right to control its borders and engage in enforcement of immigration laws, the “human dignity and human rights of undocumented migrants should be respected.” We declared that “[r]egardless of their legal status, migrants, like all persons, possess inherent human dignity that should be respected Government policies that respect the basic human rights of the undocumented are necessary.”²

USCCB’s Call for Comprehensive Immigration Reform in Lieu of an Enforcement-Only Approach

According to the Pew Hispanic Center, there are currently 11.2 million unauthorized persons residing in the United States.³ Of these, approximately 8 million – or 70 percent -- are in the U.S. labor force.⁴ Each year, between 300,000 and 500,000 more unauthorized migrants enter the country.⁵ In large part, these migrants feel compelled to enter the United States because of either the explicit or implicit promise of employment in the U.S. agriculture, construction, and service industries, among others. Most of this unauthorized flow comes from Mexico, a nation struggling with severe poverty, where it is often impossible for many to earn a living wage and meet the basic needs of their families.

Survival has thus become the primary impetus for unauthorized migration flows into the United States. Today’s unauthorized migrants are largely low-skilled workers who come to the United States for work to support their families. They work in the agricultural, meatpacking, landscaping, services, and construction industries in the United States. They fill the ranks of U.S. businesses, large and small, throughout the country.

Over the past several decades, the demand by U.S. businesses for low-skilled workers has grown exponentially, while the supply of available workers willing to perform these *low-skilled* jobs in the United States has diminished.⁶ Yet, there are only 5,000 green cards available annually for

¹ *Strangers No Longer: Together on a Journey of Hope. A Pastoral Letter Concerning Migration from the Catholic Bishops of Mexico and the United States*, January 23, 2003, No. 78 [hereinafter, *Strangers No Longer*].

² *Strangers No Longer*, at No. 38.

³ Jeffrey S. Passel and D’Vera Cohn, *Unauthorized Immigrant Population, National and State Trends, 2010* (Washington, DC: Pew Hispanic Center, 2011), 1, <http://pewhispanic.org/reports/report.php?ReportID=133>.

⁴ Passel and Cohn, *Unauthorized Immigrant Population, National and State Trends, 2010*, at 1. See also Rakesh Kochhar, C. Soledad Espinoza, and Rebecca Hinze-Pifer, *After the Great Recession: Foreign Born Gain Jobs; Native Born Lose Jobs* (Washington, D.C.: Pew Hispanic Center, 2010), 4-5, <http://pewhispanic.org/files/reports/129.pdf>.

⁵ Jeffrey S. Passel and D’Vera Cohn, *US Unauthorized Immigration Flows Are Down Sharply Since Mid-Decade* (Washington, DC: Pew Hispanic Center, 2010), 1, <http://pewhispanic.org/files/reports/126.pdf>.

⁶ See, e.g., Gordon H. Hanson, *The Economics and Policy of Illegal Immigration in the United States*, Migration Policy Institute (December 2009).

low-skilled workers to enter the United States lawfully to reside and work.⁷ This number stands in stark contrast to the estimated 300,000-500,000 migrants who enter the United States without authorization each year, most of whom are looking for work.⁸ The only alternative to this is a temporary work visa through the H-2A (seasonal agricultural) or H2B (seasonal non-agricultural) visa programs, which provide temporary status to low-skilled workers seeking to enter the country lawfully. While H-2A visas are not numerically capped, agricultural employers have reported great difficulty in making use of them. H-2B visas are capped at 66,000 annually. Both only provide temporary status to work for a U.S. employer for one year.⁹ At their current numbers, these are woefully insufficient to provide legal means for the foreign-born to enter the United States to live and work, and thereby meet our demand for foreign-born labor.

In the past decade alone, Congress has spent \$117 billion of taxpayer dollars on immigration enforcement initiatives, yet the number of unauthorized in the country has grown and the demand for foreign-born, low-skilled labor has continued on pace with the ebbs and flows of the U.S. economy. It is clear that another approach is necessary.

Mr. Chairman, the U.S. Catholic Bishops do not believe that “enforcement only” immigration policies will humanely resolve the policy dilemma created by an increasing number of unauthorized immigrants in the United States. Rather, we support comprehensive immigration reform to fix what has become a broken system. Such reform would include: an earned legalization program for foreign nationals of good moral character; the reform of the family-based immigration system; a revamped temporary worker regime that protects both the workers who would come to the United States and U.S. citizen workers; the restoration of immigrants’ due process rights; and an effort to meaningfully address the root causes of migration, such as under-development and poverty in sending countries.

Moreover, Mr. Chairman, such reform would include the targeted, proportional, and humane enforcement of immigration laws. The U.S. Catholic Bishops accept the legitimate role of the U.S. government in intercepting unauthorized migrants who attempt to travel to the United States. The U.S. Bishops also believe that by increasing lawful means for migrants to enter, live, and work in the United States, law enforcement will be better able to focus upon those who truly threaten public safety such as drug and human traffickers, smugglers, and would-be terrorists. It is our view that comprehensive immigration reform would help restore the rule of law by replacing unauthorized migration flows with meaningful and adequate legal avenues for migration, compatible with both our future labor needs and our ongoing prioritization of family reunification.

USCCB’s Position on the Mandatory Expansion of E-Verify

Mr. Chairman, as you know, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 mandated legacy U.S. Immigration and Naturalization Service (INS) to create a pilot National Employer Electronic Verification System, which has become known as the E-Verify

⁷ Hanson, *The Economics and Policy of Illegal Immigration in the United States*, at 6.

⁸ Passel and Cohn, *U.S. Unauthorized Immigration Flows Are Down Sharply Since Mid-Decade*, iii.

⁹ Hanson, *The Economics and Policy of Illegal Immigration in the United States*, at 6.

System, with the purpose of providing employers who volunteer to be a part of the program with a tool for uncovering fraudulent identity documents.¹⁰ The goals of E-Verify are to reduce the employment of unauthorized individuals; reduce discrimination; protect the civil liberties and privacy of employees; and prevent undue burden on employers.¹¹ As you are aware, Mr. Chairman, the U.S. Citizenship and Immigration Service (USCIS) and the Social Security Administration (SSA) jointly administer E-Verify.¹² According to the Government Accountability Office (GAO), between October 2009 and August 2010, E-Verify handled approximately 14.9 million queries from some 222,000 participating employers.¹³

Mr. Chairman, the use of E-Verify by employers is, for the most part, voluntary. However, over the past few years, there has been a move to make its use mandatory by certain, if not all, employers. The Office of Management Budget (OMB) in 2007 directed all federal agencies to use E-Verify on new hires. Select federal contractors and subcontractors, similarly, have been required since September 2009 to use E-Verify for both newly-hired and current employees working on a contract.¹⁴ And, some states have required that employers use E-Verify for new hires, as well. For other employers, however, the use of E-Verify is presently voluntary.

Now, Mr. Chairman, some members of Congress are calling for the mandatory use of E-Verify by all employers across the country. Many seek to do so, however, in a vacuum – without addressing holistically the systemic problems confronting U.S. immigration laws and their enforcement and without addressing some core weaknesses in the current E-Verify program.

The U.S. Conference of Catholic Bishops believes that the overarching goals of E-Verify are meritorious but believes that mandatory expansion of the system should only take place if: (1) it is undertaken in the context of comprehensive immigration reform; (2) error rates in Government databases are reduced significantly; (3) opportunities for employer misuse of the program are curbed; and (4) workers are provided with a fair and meaningful opportunity to correct false positives. Put another way, Mr. Chairman, should all of these criteria not be met first, the U.S. Catholic Bishops would oppose the mandatory expansion of E-Verify.

Mr. Chairman, I will now address each of these criteria in turn.

First, and foremost, we urge lawmakers to not consider mandating the expanded use of E-Verify unless they do so as part of a comprehensive immigration reform bill. As I have stated previously, the U.S. Catholic Bishops believe that comprehensive reform, including a broad

¹⁰ Illegal Immigration Reform and Immigrant Responsibility Act, as amended, Pub. L. No. 104-208, div. C, §§ 401-404, 110 Stat. 3009-546, 3009-655 to -665 (1996).

¹¹ See, e.g., U.S. Government Accountability Office, *Employment Verification: Federal Agencies have Taken Steps to Improve E-Verify, but Significant Challenges Remain* (December 2010) [hereinafter, GAO: Employment Verification], at 1-2.

¹² GAO: *Employment Verification* at 1-2.

¹³ GAO: *Employment Verification* at 2.

¹⁴ GAO: *Employment Verification* at 2. On August 11, 2008, USCCB submitted comments to the Civilian Agency Acquisition Council and the Defense Acquisition Relations Council on the then-proposed rule (FAR Case 2007-13, Employment Eligibility Verification, 73 Federal Register 33374 (June 12, 2008)) that required certain federal contractors to utilize the E-Verify program for employment eligibility verification purposes. At that time, USCCB stated that from a policy standpoint, it had “significant doubts whether the use of E-Verify should be used to confirm the employment status of workers” given the system’s flaws, which persist today.

legalization program and the expansion of legal avenues for low-skilled workers to enter the United States lawfully, is a moral, economic, and policy imperative. More practically, unless Congress legalizes a broad section of unauthorized immigrants in the United States, any mandatory employment verification system will begin with a handicap of some 8 million unauthorized workers.¹⁵ Should E-Verify be expanded or made mandatory without legalizing these millions of unauthorized presently in the United States and expanding the legal avenues for new flows of low-skilled workers to enter the United States lawfully to live and work, many of these workers inevitably would be driven into the underground economy by unscrupulous employers¹⁶ seeking to go around the system.¹⁷ Other jobs would likely move overseas looking for employees willing to take lower wages. Either way, this would hurt both the U.S. economy and American workers and their families, decreasing federal tax revenue by more than \$17.3 billion over ten years,¹⁸ creating an unequal workplace, and lowering labor standards for all workers.

Second, the U.S. Catholic Bishops maintain that prior to considering expanding or imposing the mandatory use of E-Verify for the approximately six million employers in the United States, the Administration must achieve greater reductions in the error rates in Government databases. As you know, Mr. Chairman, the E-Verify system relies on Government databases that continue to exhibit high error rates for workers' names, dates of birth, and status. While USCIS and the SSA have undertaken various steps to improve the accuracy of the system, such errors persist. For instance, according to the GAO, despite the expansion of the number of databases queried by E-Verify and the incorporation of additional quality control procedures in the system, there remain significant weaknesses in the system.¹⁹ Indeed, in fiscal year 2009, of the 22,512 tentative nonconfirmations (TNC) issued as a result of a name mismatch, some 76 percent – 17,098 – were for U.S. Citizens. According to the GAO, were E-Verify made mandatory for new hires across the country, based on this error rate, over 100,000 U.S. Citizens would receive a name-related TNC annually – a number that would be even greater were E-Verify made mandatory not only for new hires but also for all existing employees.²⁰ And, the number of erroneous nonconfirmations as a portion of all TNCs issued remains, according to Migration Policy Institute, “alarmingly high.”²¹ Moreover, USCIS remains unable to determine the number of employees improperly confirmed by E-Verify as authorized workers; data shows that an

¹⁵ Passel and Cohn, *Unauthorized Immigrant Population, National and State Trends, 2010*, at 1.

¹⁶ See, e.g., Marc R. Rosenblum, *E-Verify: Strengths, Weaknesses, and Proposals for Reform* Migration Policy Institute, 8 (February 2011) (“Employers who move their operations off the books also may be more likely to violate minimum wage, health and safety, and other worker protections. Thus, unauthorized employment in jurisdictions that require employers to use E-Verify may result in worse exploitation of unauthorized workers than in jurisdictions without E-Verify.”).

¹⁷ Indeed, despite the use of employer sanctions and the legalization of a broad swath of the unauthorized in the United States in 1986, the number of unauthorized workers in the United States burgeoned in the subsequent two decades. Without coupling enforcement with the legalization of those currently unauthorized and the expansion of the legal avenues for unskilled workers to enter the United States to live and work, any one measure will fail to meaningfully address the issue.

¹⁸ See Congressional Budget Office and the Joint Committee on Taxation, Letter to the Honorable John Conyers, Jr. (April 4, 2008), available at <http://www.cbo.gov/ftpdocs/91xx/doc9100/hr4088ltr.pdf> (last visited, February 4, 2011) [hereinafter, CBO and Joint Committee on Taxation, Conyers Letter].

¹⁹ GAO, *Employment Verification* at 17-20.

²⁰ GAO, *Employment Verification* at 19.

²¹ Rosenblum, *E-Verify: Strengths, Weaknesses, and Proposals for Reform*, 7-8.

estimated three percent of workers confirmed by E-Verify as authorized to work in the United States are actually unauthorized – signaling possible employer fraud and/or identity theft.²² These weaknesses, in turn, further lend the system vulnerable to identity theft and employer fraud.²³

Third, Mr. Chairman, it is our position that Congress must insist that mechanisms be put into place to meaningfully curb employer misuse of E-Verify before it considers expanding it or making its use mandatory. As you are aware, some employers have illegally misused the system by verifying the employment status of only “foreign-looking” job applicants prior to hiring them, in direct contravention of federal immigration and antidiscrimination laws. Furthermore, some employers have reduced the pay or even fired employees who challenge the SSA’s finding that they are working illegally. These abuses could be corrected by enacting tough civil and criminal penalties for employers who misuse the program; by undertaking, monitoring, and evaluating outreach and education of employers on the proper use of the program²⁴; and by more frequent enforcement of labor laws.

Fourth, and finally, Mr. Chairman, the U.S. Catholic Bishops believe that prior to the expansion or mandatory implementation of E-Verify, the Administration must ensure that workers have a fair opportunity to correct false positives. Under the current system, many workers receive notification that they are not authorized to work, when in fact they are. Workers should have effective and efficient means by which they can challenge negative findings.

In a recent report, the GAO noted that where an unauthorized employee’s name is recorded differently on authorizing documents, the system will issue a TNC for the employee. According to the GAO, because these TNCs are more likely to affect foreign-born employees with more “complicated” names, “they can lead to an appearance of discrimination.”²⁵ This is concerning. Employees must be educated about the need to be consistent in recording their names on employer documentation to avoid such errors. For the system to be accurate, USCIS needs to undertake employee outreach and education. Accordingly, the U.S. Bishops believe that any nationwide verification should be phased-in at a reasonable rate with objective benchmarks regarding database accuracy and employee education.

Similarly, Mr. Chairman, in the system’s current iteration, employees are not able to readily identify and correct any errors that may have led to the generation of an inaccurate TNC. To first identify the source of the incorrect information, employees must file Privacy Act requests, which according to the GAO, took an average of 104 days to process in fiscal year 2009.²⁶

²² GAO, *Employment Verification* at 22.

²³ GAO, *Employment Verification* at 16. See also Rosenblum, *E-Verify: Strengths, Weaknesses, and Proposals for Reform*, 5-6; Daniel Gonzalez, “Migrants Trick E-Verify,” *The Arizona Republic* (February 8, 2011), available at <http://www.azcentral.com/arizonarepublic/news/articles/2010/02/26/20100226everify0226.html> (last visited February 8, 2011).

²⁴ See GAO, *Employment Verification* at 27 (according to the GAO, USCIS has undertaken outreach and education of employers regarding use of E-Verify, yet has “not fully assessed the effectiveness of its efforts and therefore is not in the position to know whether they have achieved their intended purpose”).

²⁵ GAO: *Employment Verification* at 16-20.

²⁶ GAO: *Employment Verification* at 34.

The implementation of a mandatory E-Verify system would impact some 60 million employees in the United States annually.²⁷ Before undertaking such a task, USCIS and SSA should develop procedures to ensure that employees can efficiently and effectively identify and correct inaccurate information that may have led to an erroneous TNC. Moreover, Mr. Chairman, we believe that employees should be provided an adequate administrative and judicial review process that provides for remedies such as back pay and attorney's fees if a worker was fired due to an SSA or USCIS error. And, employers should be required to provide workers with compensated time off of work to visit an SSA field office and challenge a finding that the worker is unauthorized.

Mr. Chairman, in its current form, E-Verify is not ready to be implemented nationally by all U.S. employers. Moreover, Mr. Chairman, imposing the mandatory use of E-Verify in the absence of other, meaningful, and comprehensive reforms to our immigration laws, would result in significant negative impacts on workers in the United States, their families, and our economy.

The U.S. Catholic Bishops urge lawmakers to take a measured, holistic approach to the challenges presented by unauthorized migration into the United States in lieu of an enforcement-only effort that operates in a vacuum to target and penalize either (or both) unauthorized workers and their employers.

²⁷ GAO: *Employment Verification* at 19.

Conclusion

Mr. Chairman, I would like to thank you for permitting me to submit testimony before the Subcommittee today.

The U.S. Catholic Bishops believe that immigrants should come to the United States lawfully, but we also understand that the current immigration legal framework does not adequately reunify families and is non-responsive to our country's need for labor.

The U.S. Catholic Bishops believe that it would be morally and politically irresponsible to expand or make mandatory the use of E-Verify without first engaging in comprehensive immigration reform; significantly reducing error rates in Government databases upon which the system relies; curbing opportunities for employer misuse of the program; and providing workers with a fair and meaningful opportunity to correct false positives. Accordingly, the U.S. Bishops oppose the mandatory expansion of E-Verify without first addressing these issues.

We urge Congress to resist engaging in a piecemeal and enforcement-only approach to the complex issue of unauthorized immigration, and instead pass immigration reform laws which ensure the rule of law in the United States, while simultaneously ensuring that the laws that rule are rooted in the reunification of family, responsive to our economy's demand for labor, and respectful of the humanity of the immigrants in our midst.

Thank you for your consideration of our views.