



**Written Statement of Mee Moua  
President and Executive Director  
Asian Americans Advancing Justice | AAJC**

**House Subcommittee on Immigration and Border Security**

**Hearing on H.R. \_\_\_\_ “The Legal Workforce Act”**

**February 4, 2015**

Asian Americans Advancing Justice | AAJC (Advancing Justice | AAJC) is a national non-profit, non-partisan organization that works to advance the human and civil rights of Asian Americans through advocacy, public policy, public education, and litigation. Founded in 1991, Advancing Justice | AAJC is one of the nation's leading experts on civil rights issues of importance to the Asian American and Pacific Islander (AAPI) community including: immigration and immigrants' rights, affirmative action, anti-Asian violence prevention/race relations, census, language access, television diversity and voting rights.

We appreciate this opportunity to submit a statement concerning today's hearing on the Legal Workforce Act. We commend the Subcommittee for holding this important hearing and would like to express our deep concern and opposition to implementation of a mandatory E-Verify program nationwide, especially in the absence of a path to citizenship for individuals without status. Mandating E-verify will have a destructive impact on workers, employers and our economy as a whole.

**Mandatory E-Verify Harms Will Disproportionately Hurt AAPI Workers**

Asian American authorized workers – including citizens and green card holders – already face a higher risk of being flagged as undocumented by E-Verify than U.S-born workers. Lawful Permanent Residents (LPRs) and other work-authorized noncitizens receive erroneous E-Verify determinations at much higher rates than U.S. citizens.<sup>1</sup> According to the most recent DHS-commissioned study, the tentative nonconfirmation (TNC) error rate for LPRs is 0.9 percent and for other noncitizens who are legally authorized to work (e.g. asylees) is 5.4 percent.<sup>2</sup> This means that an LPR is *four times* more likely to receive an erroneous TNC than a U.S. citizen. For other noncitizens, this discrepancy is even more pronounced, as a noncitizen legally authorized to work in the U.S. is over *twenty-seven times* more likely to

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<sup>1</sup> *Evaluation of the Accuracy of E-Verify Findings* (Westat Corporation, July 2012), at p. 24 [http://www.uscis.gov/sites/default/files/USCIS/Verification/E-Verify/E-Verify\\_Native\\_Documents/EVerify%20Studies/Evaluation%20of%20the%20Accuracy%20of%20EVerify%20Findings.pdf](http://www.uscis.gov/sites/default/files/USCIS/Verification/E-Verify/E-Verify_Native_Documents/EVerify%20Studies/Evaluation%20of%20the%20Accuracy%20of%20EVerify%20Findings.pdf), pp. X, 23 (hereinafter Westat 2012). Though dated July 2012, this report was not released to the public until July 2013.

<sup>2</sup> *Id.* By comparison, the TNC error rate for U.S. citizens for the same time period is 0.2 percent.

receive a TNC than a U.S. citizen. Because workers who receive a TNC often face negative impacts such as suspension from work or reduced pay, the heightened TNC error rate for LPRs and other work-authorized noncitizens results in discrimination.<sup>3</sup> This is particularly troubling to the more than 8 million foreign born AAPIs who live in the U.S.<sup>4</sup>

If E-Verify is made mandatory, a disproportionate number of AAPIs will be wrongly identified and have their jobs jeopardized. Workers falsely flagged as unauthorized to work under proposals such as the Legal Workforce Act are out of luck. In fact, the Legal Workforce Act bars workers from bringing any claim under virtually any law—including laws explicitly designed to provide labor protections—for loss of their job or violations that occur as a result of an employer’s use of the program.<sup>5</sup> No one should lose his or her job due to governmental error. That’s the situation thousands of workers would face under this bill, leaving them vulnerable to losing wages – or even their jobs – while they try to correct governmental errors in the E-Verify database.

E-Verify also promotes discrimination against AAPIs. The same DHS-commissioned study found that many employers unlawfully use E-Verify to prescreen employees, unlawfully took adverse employment actions based on tentative non-confirmation notices, and failed to inform employees of their rights.<sup>6</sup> In addition, the U.S. General Accountability Office reports that USCIS is limited in its ability to identify and prevent the misuse of E-Verify, with little or no authority to impose penalties.<sup>7</sup>

Moreover, E-Verify depresses working conditions for all workers. E-Verify builds on the flawed employer sanctions framework and incentivizes employers to pay workers “off the books,” resulting in increased labor abuses. A mandatory system will drive existing vulnerable undocumented immigrant workers – as well as those who will inevitably continue to come into the country to find work to support their families unless the root causes of migration are addressed – further underground and subject to exploitation. Such conditions are ripe for wage theft, indentured servitude, unsafe working conditions, debt-bondage, and other workplace abuses. These workplace abuses encourage a race to the bottom by employers that hurts all workers, disadvantages law-abiding employers, and cripples consumer spending that holds back the whole economy.

Further, as workers move off the books, much-needed revenue is drained from federal and state governments’ coffers. The Congressional Budget Office found that the Legal Workforce Act would increase federal budget deficits by \$30 billion and cost the federal government over \$1.2

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<sup>3</sup> *Id.* at pp. 205-206, which documents that nearly 40 percent of workers surveyed experienced some form of adverse action by their employer as a result of a TNC.

<sup>4</sup> U.S. Census Bureau, *We the People: Asians in the United States: Census 2000 Special Reports*, 20 available at <http://www.census.gov/prod/2004pubs/censr-17.pdf>.

<sup>5</sup> The only avenue of redress that the bill allows workers who unjustly lose employment because of an E-Verify error is to sue the federal government under the Federal Tort Claims Act (FTCA) for lost wages. However, this is an empty remedy, given the procedural hurdles to bringing an FTCA claim, see 28 U.S.C. § 2675, the FTCA’s restrictions on attorney’s fees, and the limits of the “discretionary function exception” of the FTCA, see 28 U.S.C. § 2680(a).

<sup>6</sup> See Westat, *supra* note 1.

<sup>7</sup> Richard M. Stana, U.S. Government Accountability Office, *Testimony: Employment Verification: Federal Agencies Have Improved E-Verify, but Significant Challenges Remain*, 6 available at <http://www.gao.gov/new.items/d11330t.pdf>.

billion to implement.<sup>8</sup> A significant portion of this lost revenue would be the result of the increase in the number of employers who pay workers under the table, outside of the tax system, since, as the CBO noted, under an E-Verify mandate, “[s]ome employers who currently withhold income and payroll taxes from the wages of unauthorized workers . . . would no longer withhold or report such taxes.”<sup>9</sup>

Procedural safeguards and other protections – while important to implement – do not erase E-Verify’s harms. E-Verify proponents claim that the system will be crafted with procedural safeguards to protect American workers, prevent identity theft, and provide due process protections. These assurances are dubious; procedural safeguards do not eliminate the lost productivity and time needed to correct inaccuracies in the system. They will also be difficult to navigate for the nearly one-third of AAPIs who face language barriers.<sup>10</sup>

**E-Verify also increases regulatory burdens on employers, particularly small business owners.**

AAPIs own more than 1.5 million small businesses in the U.S., with receipts of \$507.6 billion.<sup>11</sup> E-Verify will require compliance training and infrastructure for electronic submission and subsequent work verification. These compliance costs will disproportionately affect small businesses. Based on 2010 data, if E-Verify was made mandatory, it would cost 2.7 billion dollars, with America’s small businesses paying 2.6 billion dollars of that cost.<sup>12</sup> Resolving tentative and false non-confirmations expends additional time and resources that small businesses can ill afford to lose. Workers with errors in their records often have to take unpaid time off to resolve the issues with the Social Security Administration (SSA) or the DHS. Members of the American Council on International Personnel reported that corrections at SSA usually take in excess of 90 days, a wait of four (4) or more hours per trip, with frequent trips to SSA to get a record corrected.<sup>13</sup> This decreases the productivity of the workers and employers alike.

**The U.S. cannot afford to divert scarce governmental and financial resources towards funding this deeply flawed program.**

According to the U.S. Congressional Budget Office, implementing a mandatory E-Verify program (without legalizing the current undocumented population) would force employers and

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<sup>8</sup> *Congressional Budget Office Cost Estimate: H.R. 1772: the Legal Workforce Act* (Congressional Budget Office, Dec. 17, 2013), <http://www.cbo.gov/sites/default/files/hr1772.pdf>, at p. 1.

<sup>9</sup> *How Changes in Immigration Policy Might Affect the Federal Budget* (Congressional Budget Office, Jan. 2015), <https://www.cbo.gov/sites/default/files/cbofiles/attachments/49868-Immigration4.pdf>, p. 31.

<sup>10</sup> Limited English proficiency ranges from 18% (Japanese Americans) to 51% (Vietnamese Americans) among the different AAPI ethnic groups. See U.S. Census Bureau, 2007-2009 American Community Survey, 3-Year Estimates.

<sup>11</sup> U.S. Census Bureau, Facts for Features: Asian/Pacific American Heritage Month (May 2011), available at [http://www.census.gov/newsroom/releases/archives/facts\\_for\\_features\\_special\\_editions/cb11-ff06.html](http://www.census.gov/newsroom/releases/archives/facts_for_features_special_editions/cb11-ff06.html).

<sup>12</sup> Jason Arvello, “Free’ E-Verify May Cost Small Businesses \$2.6 Billion: Insight,” *Bloomberg*, Jan. 28, 2011.

<sup>13</sup> Tyler Moran, National Immigration Law Center, Written Statement to House Committee on the Judiciary, Subcommittee on Immigration Policy and Enforcement, Hearing on: “E-Verify: Preserving Jobs for American Workers” (February 11, 2011), available at <http://www.nilc.org/immsemplymnt/ircaempverif/e-verify-testimonynilc-2011-02-10.pdf> (citing American Council on International Personnel, “Comments on Proposed Rule Published at 73 Fed. Reg. 33374 (June 12, 2008),” August 11, 2008).

workers to resort to the black market, outside of the tax system. This would decrease federal revenue by more than \$17.3 billion over ten years.<sup>14</sup> In a time of slowed economic growth and limited resources, the federal government cannot afford to expand E-Verify.

Instead of expanding E-Verify – a system that hurts the economy and promotes workplace exploitation – we should establish full labor and workplace rights and protections for all workers regardless of immigration status, repeal employer sanctions, and fix our broken immigration system through broad reform that includes a clear and fair roadmap to citizenship for all 11 million undocumented immigrants. This would result in a large economic benefit—a cumulative \$1.5 trillion in added U.S. gross domestic product over 10 years.<sup>15</sup>

For all of these reasons, we oppose an expansion of the existing E-Verify program.

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<sup>14</sup> Peter R. Orszag, Director, Congressional Budget Office, Letter to Rep. John Conyers (April 4, 2008), available at <http://www.cbo.gov/ftpdocs/91xx/doc9100/hr4088ltr.pdf>.

<sup>15</sup> Raul Hinojosa-Ojeda, University of California Los Angeles, Raising the Floor for American Workers: The Economic Benefits of Comprehensive Immigration Reform (January 2010), 10 available at <http://www.immigrationpolicy.org/sites/default/files/docs/Hinojosa%20-%20Raising%20the%20Floor%20for%20American%20Workers%20010710.pdf>.