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**COMMENTS IN REGARD TO 14-H 7463 –
RELATING TO LABOR AND LABOR RELATIONS**
March 4, 2014

The ACLU opposes the mandatory use of the flawed E-Verify program, and supports this legislation's clarification that use of the program should remain voluntary. Many of our concerns about the program, outlined below, are echoed by the federal government in their most recent evaluation of E-Verify, "Employment Verification: Federal Agencies Have Taken Steps to Improve E-Verify, but Significant Challenges Remain", released by the Government Accountability Office in December 2010. E-Verify was intended to be, and still largely is, a voluntary program; given the lasting concerns with E-Verify, we believe that ensuring the program remain voluntary will mitigate the effect to which the program is used to discriminate and bar lawful workers, including U.S. citizens, from securing work.

E-Verify Databases Contain Millions of Errors

According to the most recent data available, the Social Security Administration (SSA) estimates that 17.8 million of its records contain discrepancies related to name, date of birth, or citizenship status. Of these flawed records, 12.7 million are for U.S. citizens. There are more flawed records in one of E-Verify's key databases, then, than there are non-legal workers in the United States. Errors and outdated information are also prominent in the databases of the Department of Homeland Security and the U.S. Bureau of Citizenship and Immigration Services. A 2006 Government Accountability Office (GAO) report found that in just 14 USCIS district offices, over 110,000 immigrant records were lost.

Though a 2007 Westat study commissioned by DHS did find improvement in database accuracy, it noted that "[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." The December 2010 GAO report on E-Verify notes that while steps have been taken to reduce tentative nonconfirmation reports (TNCs), "the accuracy of E-Verify continues to be limited".

Foreign-Born Citizens and Lawful Workers Are Negatively Impacted

As a result of these database errors, foreign-born lawful workers, including those who have become citizens, 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.

The 2010 GAO report found that 76 percent of name mismatches in 2009 affected U.S. citizens. The GAO also noted that numbers of mismatches are likely to increase if E-Verify were to become a mandated program. Individuals of Hispanic or Arab origin, according to the GAO report, are more likely to receive a TNC as a result of a name mismatch.

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 TNC. For those who can, resolving a TNC involves taking time off from their new job to fix the database error. It is also conceivable that in order to resolve the TNC, the new employee would have 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 program evaluation of E-Verify found that employers engaged in discriminatory practices directly prohibited by the E-Verify program. Forty-seven percent of employers pre-screened job applicants. 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 works are citizens are denied employment because of their name, their accent, or their skin color. Disturbingly, the program evaluation found that 9.4 percent of employers never even notified potential employees of their TNC, never giving them a chance to resolve the database 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, in an effort to combat TNCs by 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. According to the Pew Research Center's Internet & American Life Project, one in five American adults do not use the, and 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 Department of Homeland Security's 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 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.

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 supports keeping E-Verify use voluntary.