OBAMA-BIDEN TRANSITION PROJECT

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Actions for Restoring America: Transition Recommendations for President-Elect Barack Obama

Presented by the American Civil Liberties Union
November 2008

(Recommendations on Employee Databases)

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Employee databases

Background

American employees are increasingly being subjected to vetting through federal databases that are rife with error.

Social Security "No Match" letters are mailed annually to employers to inform them that employee-provided Social Security tax information does not match a file at the Social Security Administration. This is simply a notice that there may be a confusion about a person's current name or its spelling, or that another database error has occurred. Only occasionally does it indicate that an employee may not be lawfully eligible to work. Furthermore, these letters represent information that could be many months (if not more than a year) old. This is at best, a grossly ineffective tool for trying to target immigration enforcement.

The voluntary Basic Pilot Employment Verification System (aka "E-Verify") is a nationwide employment verification system. While currently voluntary, Congress has been threatening to make it mandatory, despite the fact that it is plagued with errors and prevents innocent workers from gaining employment.

Recommendations

1. **No Match letters.** Pledge not to turn the Social Security No Match Letter system into a de facto immigration enforcement tool. Disavow and withdraw the finalized rule republished in the Federal Register on October 23, 2008. (A federal judge issued a preliminary order stopping the government from enforcing the rule last year. The court's order continues to apply to the republished rule.) The republished No Match rule would – if allowed to go into effect – require employers to terminate employees who do not resolve discrepancies identified in a No Match letter within an impossibly short time frame.

2. **E-Verify.** Suspend enrolling new employers in the "e-verify" (formerly Basic Pilot) program until DHS demonstrates sufficient database accuracy and enforcement of the MOU standards governing employer enrollment, and until the enactment of legislation providing statutorily guaranteed administrative and judicial processes to ensure that workers who are wrongly delayed or denied the right to work are provided a quick, fair and efficient means of getting back to work and being made financially whole. While Congress in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 Pub. L. 104-210, 110 Stat. 3009-659 (Sept. 30, 1996) mandated the creation of an electronic verification program, it did not include any details or direction as to the form that that program should take, but left that to the discretion of the executive.

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Therefore, it is within the president's power to declare that in its current form the e-Verify program is not a success, and to suspend it pending a reevaluation.

Supplemental Material

- ACLU testimony in opposition to E-Verify program, June 10, 2008