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H.R. 3374: Immigration Reform and Control Act Amendments of 1989

Statement of
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Before the
Subcommittee on Immigration, Refugees, and International Law
Committee on the Judiciary
House of Representatives

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H.R. 3374: IMMIGRATION REFORM AND CONTROL ACT (IRCA) AMENDMENTS OF 1989

SUMMARY OF STATEMENT BY
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H.R. 3374 would make various changes to the Immigration Reform and Control Act of 1986 including the employer sanction and discrimination provisions. GAO assessed some of the more significant aspects of the bill.

Section 101 would require the Attorney General to provide for the issuance of a work authorization card, upon request; to any citizen or authorized alien in the United States. GAO is concerned that there are already too many work-authorization documents to realistically expect employers to make sound judgments on their genuineness. Adding another document may worsen the situation.

Section 102 would provide that criminal penalties could not be imposed against employers alleged to have violated the employer sanction provision of IRCA until there is at least one civil monetary penalty imposed for a sanction violation. GAO is concerned that this section would reduce U.S. attorneys' discretionary authority to seek criminal indictments when they believe a crime has been committed.

GAO believes certain sections would improve IRCA's implementation.

Section 103 would expand IRCA's discrimination protections to include discrimination in the terms and conditions of employment. Under IRCA, discrimination is prohibited only with respect to hiring, recruitment, and discharge. GAO supports this amendment because of evidence that IRCA's implementation may have resulted in an increase in working condition discrimination.

Section 206 would expand the use of State Legalization Impact Assistance Grant (SLIAG) funds to include education, outreach, and enforcement efforts regarding employment discrimination. GAO's preliminary results of a survey of over 9,000 randomly selected employers nationwide show nearly half of the respondents reported that they did not understand IRCA's discrimination provision. Accordingly, GAO believes the use of SLIAG funds to educate employers about the law's discrimination protections would help fill a need.

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss H.R. 3374--the Immigration Reform and Control Act (IRCA) Amendments of 1989. Our testimony today is based primarily on the work in progress for our third and final report to Congress on employer sanctions, as well as on our two previous reports. We plan to issue our third employer sanction report in January 1990.

BACKGROUND

The Immigration Reform and Control Act of 1986 requires us to issue three annual reports on the implementation of the employer sanctions law for the purpose of determining whether (1) the law has been implemented satisfactorily, (2) a pattern of discrimination has resulted against authorized workers, and (3) an unnecessary regulatory burden has been created for employers. We issued our first and second annual reports in November 1987 and 1988, respectively, and work is in progress for our third report to be issued in January 1990.

During the third year, we (1) reviewed the Immigration and Naturalization Service's (INS) and other federal agencies' implementation of the law; (2) reviewed discrimination charges filed with federal agencies, as well as data from private groups representing aliens; and (3) surveyed employers and job applicants to obtain data on the law's effects.

SECTION 101

Section 101 of the bill would require the Attorney General to provide for the issuance of a work authorization card, upon request, to any citizen or authorized alien in the United States.

This document would apparently be added to the existing list of 17 different work eligibility documents that persons can use under IRCA to prove employment eligibility. We have two major concerns about this section. First, we are concerned that IRCA's current system for verifying a person's work eligibility is already too complex. There are too many different types of employment eligibility documents to realistically expect employers to make sound judgments on their genuineness. Adding another work eligibility document will make employers' responsibilities under the law more difficult. Second, we are concerned about reports of INS delays and errors in issuing various work eligibility documents. To require INS to issue a new card to any citizen or work-authorized alien who requests it may only worsen the situation.

We reported to Congress in March 1988 that there are too many documents under IRCA that can be used for employment

eligibility.[1] These include thousands of different birth certificates and 11 different INS-issued documents. One of these INS-issued documents, the resident alien card, has 17 different versions. We recommended that consideration be given to reducing the number of employment eligibility documents. We noted one option is to make the Social Security card the only acceptable document.

For our third report to Congress, we surveyed a random sample of over 9,000 employers nationwide. From the preliminary results, we estimate that about 60 percent of the 3.1 million employers in the population want the government to consider reducing the number of work-authorization documents that INS issues to aliens. Fifty percent want the Social Security card to be the only work eligibility document persons would be permitted to present. About 30 percent are not clear about the documents the law currently says can be presented as evidence of authorization to work.

Furthermore, the Acting Special Counsel in the Department of Justice, who is responsible for enforcing IRCA's antidiscrimination provision, told us of one concern about new INS work-authorization documents. He said that when INS issues new documents, his office receives an increased number of public inquiries and calls from employers. He said that because INS

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[1]Immigration Control: A New Role for the Social Security Card (GAO/HRD-88-4, March 16, 1988).

often does not provide public education programs when it issues a new card, employers are not familiar with it and want to know if it is valid. The Acting Special Counsel did not know if authorized workers may not have been hired because employers refused to accept a new and unfamiliar INS document. If this section is approved, perhaps it should include a requirement for INS to provide a public education campaign on the new document.

We also received several reports during 1989 from private agencies that stated INS often delayed issuing new or replacement cards to eligible workers. For example, the Coalition for Humane Immigration Rights in Los Angeles reported 17 cases where INS delays or errors caused problems for authorized workers. Examples of these problems included (1) INS issuing documents with typographical errors that led the employer to suspect forgery and (2) lengthy INS delays (from several months to more than a year) in issuing replacement cards.

Given the complexity of the current document system and our other concerns, we do not support section 101 in its current form. We would prefer that the section not add to the proliferation of work authorization documents employers must confront. Instead, we would prefer the section's intent be achieved by reducing the number of these documents.

SECTION 102

Section 102 of the bill would prevent the imposition of criminal penalties against employers alleged to have violated the employer sanction provisions of IRCA until at least one civil monetary penalty for a sanction violation has been imposed.

We question the need for section 102. According to an INS official, only nine employers are known to have been charged with criminal pattern and practice violations since the law was enacted over 3 years ago. During this same period, however, INS has served over 3,500 employers with notices of intent to fine for civil violations.

We are also concerned that this section would reduce the U.S. attorneys' discretionary authority to seek criminal indictments when they believe a crime has been committed. If a criminal charge cannot be brought until the civil charge is closed, employers could use the legal process to delay indefinitely the U.S. attorney's prosecution of the criminal charges.

The Acting Chief Administrative Hearing Officer in the Executive Office of Immigration Review told us that there is currently about a 3-month delay from the filing of a sanctions case to an employer sanction civil hearing. After the hearing, the judge needs additional time to decide the case. Then the employer can appeal the judge's decision to the U.S. Court of Appeals.

During this time, which may exceed a year, witnesses to support the U.S. attorney's criminal charge may become unavailable, and the investigative trail can grow cold.

SECTION 103

Section 103 would prohibit discrimination in the terms and conditions of employment. Under IRCA, discrimination is prohibited only with respect to hiring, recruitment, and discharge.

We support this amendment, in light of information that IRCA may have resulted in an increase in working condition discrimination.

As part of our current work, we surveyed various private, state, and local human rights organizations that often receive allegations of discrimination from the public. We received information from 15 organizations on about 900 allegations of discrimination from authorized workers that were received during the period from July 1, 1988, to June 30, 1989. The organizations reported that about 600 of the 900 complaints appeared to be related to IRCA's implementation.

The most frequent complaint was that employers discriminated against persons in the terms and conditions of employment. For example, about 200 complaints involved employers reducing the

wages of employees or extending their work hours. An additional 175 complaints involved other types of working condition discrimination, such as reduction in seniority status and nonpayment of wages or overtime compensation.

In addition, we found that since IRCA's enactment, the Acting Special Counsel in the Department of Justice has received at least 26 discrimination charges that involve working conditions. These charges were outside his office's jurisdiction because of the gap in IRCA's discrimination protections. In an October 1989 letter to us, the Acting Special Counsel stated that Congress may want to consider expanding the law's protections to include working conditions.

We support section 103 because it would provide some additional protections against discrimination that appear to be needed.

SECTION 105

Section 105 would authorize INS District Directors to transfer up to a total of $20 million from IRCA's emergency funds to reimburse localities for expenditures made in providing assistance to aliens applying for political asylum. Before transferring the funds, the INS District Director would have to certify that the number of asylum applications filed in the District exceeds the number filed in the preceding calendar quarter by 1,000.

In our February 1989 report--Political Asylum Applications: Financial Effect on Local Services in the Miami Area (GAO/GGD-89-54FS, Feb. 23, 1989)--we pointed out that political asylum applications in Miami increased from about 8,200 in fiscal year 1988 to about 15,000 in fiscal year 1989. According to a Miami city official, the city has concerns about the financial strain on the public organizations providing services to aliens. For example, Jackson Memorial Hospital estimated $3.35 million was spent to provide health services to Nicaraguan patients.

The funds that section 105 would provide could help defray the local costs of providing services to political asylum applicants. However, we also believe it is important that INS have internal controls to assure that the funds are used only for services consistent with this section and that INS document the organizations receiving the funds and the types of services the organizations provide.

SECTION 201

Section 201 would eliminate the deadline under current law requiring persons, granted temporary residence under IRCA, to apply for permanent residence within a 1-year period. Under this provision, there would be no deadline for filing for permanent residence and no penalties, such as deportation, could be imposed on the alien for failing to file.

Several questions may need to be answered. Would the effect of this section be to grant these aliens permanent residency, or would they remain temporary resident aliens forever? If the aliens do not have to apply for permanent residence, would they still have to demonstrate proficiency in English and U.S. history as is required of other aliens who apply for permanent residence? If not, would that provide an incentive for aliens not to apply? How would the temporary resident aliens who do not apply become U.S. citizens? We are not able to take a position on this section without knowing the answers to these questions.

SECTION 206

Section 206 would expand the uses of State Legalization Impact Assistance Grant (SLIAG) funds to include education, outreach, and enforcement efforts regarding employment discrimination based on national origin, alienage, or citizenship status.

The preliminary results of our survey of over 9,000 randomly selected employers nationwide show that about half of the respondents said they did not understand IRCA's discrimination provision. Accordingly, we believe states' use of SLIAG funds to educate the public about IRCA's discrimination protections and to enforce the law's prohibition against employment discrimination would help fill a need.

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This concludes my prepared statement. We would be pleased to answer any questions you may have.