U.S. Immigration and Customs Enforcement

STATEMENT

OF

KUMAR KIBBLE
DEPUTY DIRECTOR

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING ON WORKSITE ENFORCEMENT

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON IMMIGRATION POLICY AND ENFORCEMENT

Wednesday, January 26, 2010, 1:00 p.m.
2141 Rayburn House Office Building

Chairman Gallegly, Ranking Member Lofgren, and distinguished members of the Subcommittee:

On behalf of Secretary Napolitano and Assistant Secretary John Morton, I want to thank you for the opportunity to discuss U.S. Immigration and Customs Enforcement's worksite enforcement efforts.

Introduction

The Department of Homeland Security (DHS) has fundamentally reformed immigration enforcement, focusing on identifying and removing criminal aliens who pose a threat to public safety and targeting employers who knowingly break the law. As part of this effort, U.S. Immigration and Customs Enforcement (ICE) is focused on criminally investigating and prosecuting employers who exploit or abuse their employees and have a history of knowingly and repeatedly employing an illegal workforce. ICE is pursuing a comprehensive worksite enforcement strategy to deter unlawful employment and drive a culture of compliance with the nation's immigration-related employment laws.

The Administration's Approach to Worksite Enforcement

Arresting and removing illegal workers must be part of a strategy to deter unlawful employment, but alone it is insufficient as a comprehensive worksite enforcement strategy. Enforcement efforts focused on employers effectively target the root causes of illegal immigration. In April 2009, ICE released a worksite enforcement strategy designed to: 1) penalize employers who knowingly hire illegal workers; 2) deter employers who are tempted to

hire illegal workers; and 3) encourage all employers to take advantage of easy to use and well-crafted compliance tools. We carry out this strategy with the robust use of Form I-9 inspections, civil fines and debarment, and by promoting compliance tools like E-Verify through the ICE Mutual Agreement between the Government and Employers (IMAGE) program, discussed below.

The success of our approach to worksite enforcement is evident in the statistics. In fiscal year (FY) 2010, ICE initiated a record 2,746 worksite enforcement investigations, more than doubling the 1,191 cases initiated in FY 2008. ICE criminally arrested 196 employers for worksite-related violations, surpassing the previous high of 135 in FY 2008. ICE also issued a record 2,196 notices of inspection to employers, surpassing the prior year's record of 1,444 and more than quadrupling the 503 inspections in 2008. ICE issued 237 final orders – documents requiring employers to cease violating the law and directing them to pay fines – totaling $6,956,026, compared to the 18 issued for $675,209 in FY 2008. The total of $6,956,026 last year represents the most final orders issued since the creation of ICE in 2003. In addition, worksite investigations resulted in a record $36,611,320 in judicial fines, forfeitures, and restitutions. Finally, ICE brought a new level of integrity to the contracting process by debarring a record 97 businesses and 49 individuals—preventing unscrupulous companies from engaging in future business with the government. Through this aggressive approach to worksite enforcement, ICE is bringing employers into compliance with the law.

ICE is prioritizing the criminal prosecution of employers who knowingly hire undocumented workers, abuse and exploit their workers, engage in the smuggling or trafficking of their alien workforce, or facilitate document or benefit fraud. Our agents are trained to look for evidence of these activities and we work closely with the U.S. Attorneys' offices to obtain

indictments and prosecute offenders. ICE also continues to fulfill its responsibility to arrest and process for removal the undocumented workers encountered during worksite enforcement operations.

In addition to our enforcement efforts, ICE promotes and provides effective, accessible compliance tools to assist employers in determining the eligibility of their employees to work in the United States. ICE auditors have worked with employers to ensure that workers with questionable documentation identified during inspections are vetted for work eligibility, and any subsequent replacement workers are authorized for employment. For example, while auditing one corporation ICE identified 1,226 suspect employees that may have been unauthorized aliens from a workforce of over 8,000.

We are aware of the concerns raised by some members of this Subcommittee regarding the overall number of administrative arrests pursuant to worksite enforcement operations. The number of administrative arrests at worksites cannot, and should not, be considered in a vacuum. For the past two years, our worksite efforts have been part of a broader enforcement strategy that has seen the removal of more individuals from the United States than at any other time in the agency's history. ICE is apprehending, detaining, and removing an unprecedented number of individuals who are unlawfully present in the country – regardless of where they are apprehended.

Additionally, ICE is using our resources more strategically than ever before to enforce our immigration laws effectively. At current budget levels, ICE has the ability to remove approximately 400,000 aliens in a fiscal year. Accordingly, we make every effort to prioritize the identification, apprehension and removal of criminals and others who present the greatest threat to our communities.

Over the past two years, the Department has engaged in record enforcement, removing more aliens in both 2009 and 2010 than in any point in the history of our country, including more than 195,000 criminal aliens last year. While ICE has focused its enforcement priorities on criminal aliens and those who pose a threat to our public safety and national security, it is DHS's policy to enforce the law fully and we will continue to take action against both criminal and non-criminal aliens we encounter.

ICE's Efforts to Address Fraud in the Visa and Labor Certification Process

ICE's efforts also include identifying, investigating, and penalizing employers who engage in visa or labor certification fraud. Perpetrators of document and benefit fraud usually receive documents, whether counterfeit or legitimately issued through fraud, that could be used to open bank accounts, enter public buildings and obtain employment. Unchecked, one benefit fraud facilitator can be responsible for hundreds of aliens obtaining benefits and jobs to which they are not legally entitled, which demonstrates how ICE's investigations in this area have made an impact. Since the start of FY 2009, ICE has initiated 623 cases involving the H and L non-immigrant employment-based visa categories, and obtained 91 criminal arrests, 152 administrative arrests, 103 convictions and a total of $13,845,276 seized.

In one recent case conducted by the ICE-led Document and Benefit Fraud Task Force in Orlando, Fla., ICE targeted several defendants who were facilitating H-2B visa fraud on a large scale. The defendants in the investigation used both shell and actual companies to file for unskilled temporary workers under the H-2B visa category. The company had approximately 160 clients and charged as much as $12,000 to file the fraudulent visa petitions. They then committed fraud by placing the workers in jobs other than where they claimed that the workers

would be employed. By using shell companies, the facilitators were able to nullify the labor certification process, ensuring that legitimate determinations regarding qualified U.S. workers or the effect of wages and job conditions were not made. After guilty pleas, three principal defendants were sentenced in late 2010 to imprisonment ranging from 18 months to 24 months. Additionally, the court entered a $55,000,000 monetary judgment, which represents the amount of proceeds obtained as a result of the conspiracy.

ICE's Efforts at the Border

ICE's worksite enforcement efforts are just one part of this Administration's unprecedented effort to strengthen immigration enforcement and border security. The Department now has more resources – in terms of staffing, technology, and infrastructure — on and along the southwest border than at any point in our nation's history. Over the past two years, we have requested appropriate levels of resources to enhance these efforts. ICE's FY 2011 budget submission sought budget increases in our detention capacity and civil enforcement personnel as compared to 2009. In addition, Congress passed the *2010 Emergency Border Security Supplemental Appropriations Act*, which included $80 million for ICE to hire more than 250 special agents, investigators, and intelligence analysts.

ICE is now taking custody of more aliens encountered at the border and is increasing the consequences for illegal entry and reentry. Aliens who illegally enter in Arizona, for instance, are no longer given the opportunity to return voluntarily and instead are given orders of removal and are repatriated through other states. ICE is presenting more illegal reentry cases for prosecution along the border than ever before. In addition, ICE has assigned our own attorneys

to fortify the prosecution efforts of the Department of Justice and serve as Special Assistant United States Attorneys to prosecute border-related crime.

ICE's Strategic Partnerships

In addition to penalizing employers who violate the law, ICE is promoting easy-to-use compliance tools such as E-Verify, an Internet-based system developed and operated by U.S. Citizenship and Immigration Services (USCIS) that allows businesses to determine the eligibility of their newly hired employees to work in the United States. We also support E-Verify, training, and best practices through the ICE Mutual Agreement between Government and Employers (IMAGE), an outreach program geared at educating and training employers to comply with the nation's immigration laws. The IMAGE program, created in 2006, is a joint government and private sector initiative to build cooperative relationships that strengthen hiring practices, encourage compliance, and restore integrity to the immigration system. In FY 2010, ICE gave over 1,700 educational presentations on immigration compliance to over 13,000 employers as part of the IMAGE program.

Conclusion

In short, ICE is committed to a comprehensive approach to immigration enforcement that focuses on identifying and removing criminal aliens who pose a threat to public safety and that targets employers who knowingly break the law and drive demand for illegal immigration. Moreover, we continue to support a comprehensive reform of the Nation's immigration laws grounded in the principles of responsibility and accountability, and will work with our partners

in the Congress to that end. We look forward to continuing to build on our success through the remainder of FY 2011 and beyond.

Thank you again for the opportunity to appear before you today. I now welcome any questions that you may have.