



UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 Pennsylvania Ave, NW • Suite 1150 • Washington, DC 20425 www.usccr.gov

June 23, 2016

Leon Rodriguez, Director
U.S. Citizenship and Immigration Services
Washington District Office
2675 Prosperity Avenue
Fairfax, VA 22031

RE: **Civil Rights and State-Level Immigration Enforcement in the State of Nebraska**

Dear Mr. Rodriguez:

The U.S. Commission on Civil Rights (USCCR) urges the U.S. Citizenship and Immigration Services (USCIS) to review the enclosed USCCR Nebraska State Advisory Committee Advisory Memorandum (Memorandum), "Civil Rights and State-Level Immigration Enforcement in Nebraska." The USCCR recommends that the USCIS prohibit the use of the SAVE database to verify the immigration status of applicants for public programs which are exempt from verification under federal law. The USCCR also requests that USCIS require SAVE database users to submit clear written guidelines regarding how SAVE data will be used by each benefits issuing agency to ensure that its implementation is conducted in a uniform and nondiscriminatory manner.

In 2010, the Nebraska State Advisory Committee to the USCCR (Committee) heard testimony regarding a number of civil rights concerns related to the implementation of Nebraska's 2009 Legislative Bill 403 (LB 403). LB 403 requires that State agencies and their political subdivisions verify the lawful presence of applicants before providing federal, state, or local public benefits. It also requires that State agencies and their political subdivisions verify the work eligibility status of all employees hired after October 1, 2009, through the use of the electronic federal employment verification system known as "E-Verify." On May 5, 2015, the Committee voted to undertake a study of state level immigration enforcement in Nebraska. The Committee sought to determine whether or not the concerns raised in 2010 had materialized and whether additional civil rights concerns had surfaced.

The Committee found that despite efforts to improve the accuracy of E-Verify and SAVE, testimony suggests remaining discrepancies may have a disparate impact on the basis of race, color, and national origin. The Committee also found that while E-Verify has a relatively low incidence of non-confirmation, serious consequences can result for those affected by non-

confirmation, including employment termination and difficulty obtaining new employment. With regard to SAVE, additional challenges are posed by staff who are not properly trained in both immigration and public benefits law. Inaccurate results produced by E-Verify or SAVE, place a burden to correct errors entirely on the individual impacted, and a lack of knowledge about rights and responsibilities may prevent those impacted from reporting abuses. Incomplete, missing, and inaccurate data makes it difficult to ascertain the extent to which civil rights deprivations may have resulted from LB 403.

The Nebraska Department of Health and Human Services has required proof of authorized status for participants of programs provided under the National Breast and Cervical Cancer Screening Early Detection Programs, though under federal law these programs are exempted from immigration qualification requirements. Such restriction has disproportionately excluded persons of Hispanic origin. The USCCR recommends that USCIS prohibit the use of its SAVE database to verify the immigration status of applicants for public programs which are exempt from such verification under federal law.

Additionally, the USCCR recommends that USCIS require SAVE database users to submit clear written guidelines regarding how SAVE data will be used by each benefits issuing agency to ensure that its implementation is conducted in a uniform and nondiscriminatory manner. Federal law prohibits the use of E-Verify to discriminate against any job applicant or employee on the basis of his or her national origin, citizenship, or immigration status. The Committee did, however, hear concerns that contractors may use selective verification as a means of intimidating workers with the potential of being reported to immigration authorities if they raise labor, health, or safety concerns. Additionally, some employers may fire employees when they receive a non-confirmation in E-Verify, rather than telling the employee about the non-confirmation result and giving them the opportunity to correct their records. E-Verify may also potentially be misused to illegally pre-screen prospective workers.

The Commission strongly requests your consideration and action in regards to this letter and accompanying Memorandum.


Sincerely,



Martin Castro, Chairman



Roberta Achtenberg, Commissioner



Karen Narasaki, Commissioner



Patricia Timmons-Goodson, Vice Chair



David Kladney, Commissioner



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June 23, 2016

Jocelyn Samuels, Director
Office for Civil Rights
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Room 509F, HHH Building
Washington, D.C. 20201

RE: **Civil Rights and State-Level Immigration Enforcement in the State of Nebraska**

Dear Ms. Samuels:

The U.S. Commission on Civil Rights (USCCR) recommends that the U.S. Department of Health and Human Services, Office for Civil Rights review the enclosed USCCR Nebraska State Advisory Committee Advisory Memorandum (Memorandum), "Civil Rights and State-Level Immigration Enforcement in Nebraska." The USCCR also recommends that the U.S. Department of Health and Human Services, Office for Civil Rights investigate the impact of Nebraska's (2009) Legislative Bill 403 on access to federally supported health care services, and potential disparate impact on the basis of race, color, and national origin, focusing principally on programs and services exempted from immigration status verification under federal law.

In 2010, the Nebraska Advisory Committee to the USCCR (Committee) heard testimony regarding a number of civil rights concerns related to the implementation of Nebraska's 2009 Legislative Bill 403 (LB 403). LB 403 requires that State agencies and their political subdivisions verify the lawful presence of applicants before providing federal, state, or local public benefits. It also requires that State agencies and their political subdivisions verify the work eligibility status of all employees hired after October 1, 2009, through the use of the electronic federal employment verification system known as "E-Verify." On May 5, 2015, the Committee voted to undertake a study of state-level immigration enforcement in Nebraska. The Committee sought to determine whether or not the concerns raised in 2010 had materialized and whether additional civil rights concerns had surfaced.

The Nebraska Department of Health and Human Services is responsible for delivering many of the services requiring verification under LB 403. To do so, the Nebraska Department of Health and Human Services employees E-Verify to determine an individual's eligibility for services and the SAVE database to verify an applicant's immigration status. The Committee found that

despite efforts to improve the accuracy of E-Verify and SAVE, testimony suggests remaining discrepancies may have a disparate impact on the basis of race, color, and national origin. There has been little to no effective training or direction for state agencies and local governments regarding what programs are subject to verification and when and how verification should occur. This has created a situation in which families who should be eligible for services have either been unfairly denied or deterred from applying all together.

Inconsistencies in the definition of the term “qualified alien” and the administrative challenges stemming from a lack of training and instruction have resulted in an unclear definition of “public benefit.” The state’s arguably over-expansive view of “public benefit” means that some state agencies have adopted definitions of “public benefits” that conflict with federal law. For example, the Nebraska Department of Health and Human Services has determined they cannot provide any legal counsel to undocumented children in their custody because legal assistance would constitute a public benefit. Essentially, when undocumented children are placed in foster care, the state acts as the children’s guardian; however, if the state refuses to advise these children of their rights under federal law, the state is simultaneously denying them access to critical rights and services.

The Commission strongly requests your consideration and action in regards to this letter and accompanying Memorandum.

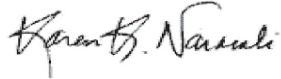
Sincerely,



Martin Castro, Chairman



Roberta Achtenberg, Commissioner



Karen Narasaki, Commissioner



Patricia Timmons-Goodson, Vice Chair



David Kladney, Commissioner



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June 23, 2016

Alberto Ruisanchez
Deputy Special Counsel
U.S. Department of Justice, Civil Rights Division
950 Pennsylvania Avenue, N.W., OSC, NYA 9000
Washington, D.C. 20530

RE: **Civil Rights and State-Level Immigration Enforcement in the State of Nebraska**

Dear Mr. Ruisanchez:

The U.S. Commission on Civil Rights (USCCR) urges the U.S. Department of Justice (DOJ), Civil Rights Division, Office of Special Counsel for Immigration Related Unfair Employment Practices, to review the enclosed USCCR Nebraska State Advisory Committee Advisory Memorandum (Memorandum), "Civil Rights and State-Level Immigration Enforcement in Nebraska." The USCCR recommends that DOJ investigate the impact of Nebraska's (2009) Legislative Bill 304 on equal employment opportunity in Nebraska.

In 2010, the Nebraska State Advisory Committee to the USCCR (Committee) heard testimony regarding a number of civil rights concerns related to the implementation of Nebraska's 2009 Legislative Bill 403 (LB 403). LB 403 requires that State agencies and their political subdivisions verify the lawful presence of applicants before providing federal, state, or local public benefits. It also requires that State agencies and their political subdivisions verify the work eligibility status of all employees hired after October 1, 2009, through the use of the electronic federal employment verification system known as "E-Verify." On May 5, 2015, the Committee voted to undertake a study of state level immigration enforcement in Nebraska. The Committee sought to determine whether or not the concerns raised in 2010 had materialized and whether additional civil rights concerns had surfaced.

The Committee found that despite efforts to improve the accuracy of E-Verify and the SAVE database, testimony suggests remaining discrepancies may have a disparate impact on the basis of race, color, and national origin. Erroneous non-confirmations primarily related to data entry errors, and cultural differences, such as hyphenated names, can increase the frequency of these errors. The burden of correcting any errors rests entirely on the individual affected and may require a physical visit to offices which only exist in Omaha. Though errors may be few, the severity of consequences for not correcting them and the current indications of a continued disparate impact raises civil rights concerns in need of further study.

Federal law prohibits the use of E-Verify to discriminate against any job applicant or employee on the basis of his or her national origin, citizenship, or immigration status. However, the Committee heard concerns that contractors may use selective verification as a means of intimidating workers with the potential of being reported to immigration authorities if they raise labor, health, or safety concerns. Of additional concern is that some employers may fire employees when they receive a non-confirmation in E-Verify, rather than telling the employee about the non-confirmation result and giving them the opportunity to correct their records. E-Verify may also potentially be misused to illegally pre-screen prospective workers.

The Commission strongly requests your consideration and action in regards to this letter and accompanying Memorandum.

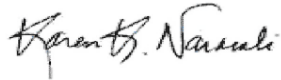
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David Kladney, Commissioner



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June 23, 2016

Catherine E. Lhamon
Assistance Secretary
U.S. Department of Education, Office for Civil Rights
Lyndon Baines Johnson Department of Education Building
400 Maryland Avenue, SW
Washington, D.C. 20202-1100

RE: **Civil Rights and State-Level Immigration Enforcement in the State of Nebraska**

Dear Ms. Lhamon:

The U.S. Commission on Civil Rights (USCCR) urges the U.S. Department of Education (ED), Office for Civil Rights to review the enclosed USCCR Nebraska State Advisory Committee Advisory Memorandum (Memorandum), "Civil Rights and State-Level Immigration Enforcement in Nebraska." The USCCR recommends that ED investigate the impact of Nebraska's (2009) Legislative Bill 403 on access to federally supported education programs (such as financial aid and federal student loans) and potential disparate impact on the basis of race, color, and national origin.

In 2010, the Nebraska State Advisory Committee to the USCCR (Committee) heard testimony regarding a number of civil rights concerns related to the implementation of Nebraska's 2009 Legislative Bill 403 (LB 403). LB 403 requires that State agencies and their political subdivisions verify the lawful presence of applicants before providing federal, state, or local public benefits. It also requires that State agencies and their political subdivisions verify the work eligibility status of all employees hired after October 1, 2009, through the use of the electronic federal employment verification system known as "E-Verify." On May 5, 2015, the Committee voted to undertake a study of state level immigration enforcement in Nebraska. The Committee sought to determine whether or not the concerns raised in 2010 had materialized and whether additional civil rights concerns had surfaced.

The Committee found that despite efforts to improve the accuracy of E-Verify and the SAVE database, testimony suggests remaining discrepancies may have a disparate impact on the basis of race, color, and national origin. Prior to providing public benefits or services, such as


postsecondary education benefits involving direct payment or financial assistance, LB 403 requires state agencies and their political subdivisions to verify the lawful presence of noncitizen public benefits applicants. Errors in the E-Verify and SAVE databases or the administration may result in denial of very broadly defined state benefits, including education benefits. The burden to correct errors lies entirely on the individual impacted, and a lack of knowledge about rights and responsibilities may prevent those impacted from reporting abuses. Because the majority of noncitizen residents in Nebraska are of Hispanic origin, such practices have had a disparate impact on this population.

The Commission strongly requests your consideration and action in regards to this letter and accompanying Memorandum.

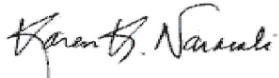
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