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DATE 3-20-07  
SB 258

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March 20, 2007  
Testimony SB 258

Chairman Mendenhall and Members of the Committee,

My name is Cathy Day and I am the Public Policy Director of the ACLU of Montana, a membership based organization of 2,500 Montana households dedicated to defending the Constitution and the Bill of Rights

It is true that the Constitution does not give foreigners the right to enter the United States illegally. But once here, it protects them from discrimination based on race and national origin and from arbitrary treatment by the government.

Earlier this session, we rose in opposition to this proposed bill. The bill was amended by the Senate to address many of the concerns that were raised during that hearing. However, regrettably, I am here today to continue to express concern about the potential for this bill to be arbitrary and discriminatory in its application.

The first concern we raised was about the broad definition of what constitutes an "unlawful alien". There are many non-citizens who have lawfully entered the United States who may be deemed "deportable", but not "unlawful" by the federal regulations. They are legally able to work or to remain in the country until a determination has been made about their status.

**The Committee's amendments do not fix the bill.**

- It is unclear how one is to determine whether a social security number or tax identification number is "unique" as required on page 1, line 13. Not even the existing employment-verification pilot program run by the Department of Homeland Security and Social Security Administration provides this information. For privacy reasons, Social Security Administration will not release SSN information
- Furthermore many non-citizens obtain a unique social security number in order to work. It is conceivable that they may possess an authentic, unique number, but are no longer "in-status" and technically "deportable". This is not a reliable way for the state to verify a non-citizen's immigration status.
- The bill goes on to state that if the department or agency cannot verify the authenticity of the Social Security number, it is tasked with requesting further information to determine if the individual is an unlawful alien. From whom is the state supposed to request this information? The bill provides no guidelines for this option.
- A list on page 2 of those not included in the definition of an "unlawful alien" is very problematic. In fact, it is a good example of the complexity of immigration law. It refers to many forms from the old Immigration and Naturalization Service which was abolished in 2003 without reference to the new forms used by US Citizenship and Immigration Services; includes forms that do NOT authorize an

alien to work, such as a DOD form 214 or military ID card; and does not include many documents that would establish an alien's eligibility to work in the United States such as an order from a federal court, Board of Immigration Appeals, or an Immigration Judge's orders.

**More fundamentally, it can be very difficult to determine who is eligible to work in the United States.**

- State boards and agencies have no training or expertise in immigration law intricacies. The proposed legislation states that a board or department can make the determination about whether or not the individual applying for the renewal of the license is an "unlawful alien". This requirement has tremendous potential for individual interpretation or misapplication of immigration law.
- Acquiring adequate immigration expertise will be costly, but necessary to ensure that people are properly licensed and not improperly denied a license. If you have ever worked with US Citizenship and Immigration Services or the Department of Homeland Security, you will know that one must often wait for a response to an inquiry and that the norm is to connect with a series of prerecorded prompts rather than speaking with real persons. Resources and technical assistance with these complex questions may be difficult and frustrating to obtain. Workers will need to be trained on determining immigration status.

This proposed legislation has many unintended consequences and the potential to violate the rights and liberties of non-citizens who have entered this country legally. I urge you to vote no on SB 258.