

Judge Blocks Bush Measure on Illegal Workers

THE NEW YORK TIMES

October 11, 2007

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A federal judge in San Francisco today ordered an indefinite delay on a central measure of the Bush administration's new strategy to curb illegal immigration.

The judge, Charles R. Breyer of federal court for the Northern District of California, said the government had failed to follow proper procedures for issuing a new rule aimed at getting employers to fire illegal employees whose Social Security numbers can not be immediately verified.

He chastised the Department of Homeland Security for making a policy change with "massive ramifications" for employers, without giving any legal explanation or conducting a required survey of the costs and impact for small business.

Under the rule issued by the Bush administration, which had been scheduled to take effect on Sept. 14, employers would be forced to fire workers within 90 days after receiving a notice from the Social Security Administration that an employee's identity information did not match the agency's records.

The rule, announced with fanfare in August by Homeland Security Secretary Michael Chertoff, was the linchpin of the administration's effort to crack down on illegal immigration by denying jobs to the immigrants, part of a campaign of stepped-up enforcement since broader immigration legislation favored by President Bush was rejected by Congress in June.

If allowed to take effect, the judge found, the rule could lead to the firing of many thousands of legally authorized workers, resulting in "irreparable harm to innocent workers and employers."

The decision brought a sense of relief to the unusual coalition behind the lawsuit, including the A.F.L.-C.I.O. and the United States Chamber of Commerce, normally adversaries.

They had feared the measure would bring mass layoffs in low-wage industries, sweeping up both illegal and legal workers and disrupting the labor force. It was an awkward disappointment for Mr. Chertoff, a former federal judge, who was relying on the rule as an enforcement tool since Congress left him with few other options.

"We will continue to aggressively enforce our immigration laws while reviewing all legal options available to us in response to this ruling," Mr. Chertoff said in a statement today.

Mr. Chertoff said the Bush administration was doing “as much administratively as we can, within the boundaries of existing law” to crack down on illegal immigration, but he called on Congress to revisit legislation to give legal status to illegal immigrants and impose even tougher enforcement measures.

Some conservative lawmakers, who argue for vigorous enforcement of the immigration laws should as a priority, said they were outraged.

“What part of ‘illegal’ does Judge Breyer not understand?” said Representative Brian Bilbray, a California Republican who is chairman of the House Immigration Reform Caucus. “Using a Social Security number that does not belong to you is a felony. Judge Breyer is compromising the rule of law principles that he took an oath to uphold.”

The rule establishes steps an employer must follow after receiving a notice from the Social Security Administration, known as a no-match letter, reporting that an employee’s identity information does not match the agency’s records.

If the employee could not clarify the mismatch by providing valid information within 90 days, employers would be required to fire the worker or risk prosecution for knowingly hiring illegal immigrants. Immigrants often provide false Social Security numbers when applying for jobs.

Before it took effect, the rule was held up temporarily on Aug. 31 by another judge in the San Francisco court, Maxine M. Chesney, to give time for Judge Breyer to consider it.

Today, Judge Breyer ordered a halt to the rule until the court can reach a final decision in the case, which could take many months. The judge made it clear he is skeptical of many of the government’s arguments.

The decision also bars the Social Security Administration from sending out about 141,000 no-match letters, covering more than eight million employees, which include notices from Homeland Security explaining the new rule. Other groups bringing the lawsuit include the American Civil Liberties Union, the San Francisco Labor Council, and several national and local small business associations.

Judge Breyer found that the Social Security database that the rule would draw upon was laden with errors not related to a worker’s immigration status, which could result in no-match letters being sent to legally authorized workers. “There is a strong likelihood that employers may simply fire employees who are unable to resolve the discrepancy within 90 days,” even if they are legal, the judge wrote.

Lucas Guttentag, a lawyer for the American Civil Liberties Union, said the government had demonstrated “a callous disregard for legal workers and citizens by adopting a rule that punished innocent workers and employers under the guise of immigration enforcement.” A.F.L.-C.I.O officials had estimated that some 600,000 of their members who were legal workers could receive the letters and be vulnerable to dismissal.

In a December 2006 report cited in the court documents, the inspector general of the Social Security Administration estimated that 17.8 million of the agency's 435 million individual records include discrepancies that could result in a no-match letter being sent to a legally authorized worker. Of those records with errors, 12.7 million belonged to native-born American citizens, the report found.

In a letter on Sept. 18 to Mr. Chertoff, the Office of Advocacy of the Small Business Administration supported a claim in the suit that federal officials had failed to carry out a required analysis of the impact on small businesses before announcing the new rule. The office is independent from the Small Business Administration, which supported the rule.

Judge Charles Breyer is the brother of a Supreme Court justice, Stephen G. Breyer, and was nominated by President Clinton in 1997.