

Revised Rule for Employers That Hire Immigrants

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The Bush administration will suspend its legal defense of a new rule issued in August to punish employers who hire illegal immigrants, conceding a hard-fought opening round in a court battle over a central measure in its strategy to curb illegal immigration, according to government papers filed late Friday in federal court.

Instead, the administration plans to revise the rule to try to meet concerns raised by a federal judge and issue it again by late March, hoping to pass court scrutiny on the second try. The rule would have forced employers to fire workers within 90 days if their Social Security information could not be verified.

The government's proposal was a response to an indefinite delay to the rule ordered Oct. 10 by the judge, Charles R. Breyer of Federal District Court in San Francisco. Judge Breyer found that the government had failed to follow proper procedures in issuing the rule and that it should have completed a survey of its impact on small business.

He also found that the Social Security database the government would use to verify workers' status was full of errors, so the rule could lead to the dismissal of many thousands of workers who were American citizens or legal immigrants.

In a four-page motion filed Friday, the government, without acknowledging any flaws in the original rule, asked Judge Breyer to suspend the case so the Department of Homeland Security could rewrite the rule and conduct the small-business survey, which it expects to do by March 24. The government said that it wanted to "prevent the waste of judicial resources" and that it was confident the amended rule would "fully address the court's concerns."

Homeland Security officials said they were not abandoning the rule and were still considering an appeal of Judge Breyer's ruling. For now they are "planning to provide an answer to the small number of minor issues that the judge raised in his opinion," Laura Keehner, a spokeswoman for the department, said.

The legal challenge was brought by an odd-fellow alliance of labor unions and business groups, including the A.F.L.-C.I.O. and the San Francisco Labor Council as well as the United States Chamber of Commerce.

"It's clear the government has given up defending an indefensible rule," said Lucas Guttentag, a lawyer for the American Civil Liberties Union, another group bringing the lawsuit. "But now they're hoping to rush through another half-baked rule without addressing the fundamental flaws. It's like putting lipstick on Frankenstein."

The rule laid out procedures for employers to follow after receiving a notice from the Social Security Administration, known as a no-match letter, advising that an employee's identity information did not match the agency's records.

The employer would have had to fire an employee who could not provide verifiable information within 90 days, or face the risk of prosecution for knowingly hiring illegal immigrants. Those immigrants often present fake Social Security numbers when applying for jobs.

Judge Breyer also stopped Social Security from sending out about 141,000 no-match letters, covering more than eight million workers, which contained instructions from Homeland Security about the rule. Social Security sends the letters to clarify workers' information so it can correctly credit taxes deducted from their wages.

Some businesses welcomed the rule because it clarified what they had to do to avoid immigration raids. But the labor unions cited a report from the inspector general of the Social Security Administration finding that 12.7 million of the records of United States citizens in the agency's database contained errors that could lead to them being fired.