

## **Where You Stand on E-Verify Depends on Where You Sit**

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The debate over the E-Verify program is less one about statistics, or even policy, than it is about two states of mind.

One says nobody should have to prove to the government that they are qualified to work in the United States. The government should have to prove they are not.

The other says that people have to be sorted out in order to enforce the law, and both must be examined to separate the legal from the illegal.

Those points of view aren't even mutually exclusive. But neither side gives the other an inch.

"The only reason why an American citizen would choose not to contest [an incorrect record] is because they have stolen someone's identity or have a criminal record they are trying to hide," said Rosemary Jenks, director of government relations at NumbersUSA, which advocates for reduced immigration. "If they choose not to contest . . . they are choosing to lose their job."

"Not a single case has come up where a U.S. citizen or an immigrant with authorization has been fired due to E-Verify," said Jenks.

Pretty definitive.

"That is a lie. I can't say it more straightforward," said Timothy D. Sparapani, senior legislative counsel for the American Civil Liberties Union.

Equally definitive.

Sparapani cites the case of a Pittsburgh federal courthouse cafeteria worker who was fired in 2006 after failing a DHS security check because of a typographical error in her Social Security record.

So, someone did lose their job. But that woman, Judy Miller, who had worked at the courthouse for 20 years, was able to regain her job and her lost wages after her member of Congress, Rep. Mike Doyle, D-Pa., intervened.

So, someone was fired, but in the end got her job back.

**States of mind**

Those who decry E-Verify say government database errors could imperil the jobs of thousands of U.S. workers if Bush administration plans to expand electronic employment verification go forward.

They argue that mandatory nationwide use of E-Verify, which combines DHS and Social Security Administration databases, would require hundreds of thousands of workers to correct faulty government records at their own expense. The program offers no compensation for wages lost while fixing the errors. But worse, critics say, is that the E-Verify program provides little recourse for workers who lose their jobs because of government mistakes.

“There is absolutely no functional redress process, said Sparapani. “And even the process they have isn’t guaranteed statutorily . . . That’s where we get into trouble.”

President Bush signed an executive order June 6 that will require contractors to check employees’ work status for all future contracts through E-Verify, affecting approximately 4 million employees.

DHS requires employers who have registered for E-Verify to inform new hires if a mismatch occurs between data submitted by a worker and that in either of the two databases. The worker then has eight federal workdays to initiate contact with the appropriate government agency to dispute the recorded data. The employee cannot be fired while the appeal is in process, according to Chris Rhatigan, spokeswoman for the Citizenship and Immigration Services, which administers the program.

However “if the employee does not contact the [SSA or DHS] office within eight days, they are considered a no show and the . . . employer can then terminate the employee,” Rhatigan said.

Sparapani says the eight-day window is too short for many low-income workers, especially those with children or who live in rural areas. He said many workers can’t afford to take even a day off work — even with their jobs on the line.

### **Entitled to Their Own Facts**

As further demonstration that the people arguing about this issue pay virtually no heed to the other side’s arguments, consider the disagreement over how many people would potentially be affected.

The Social Security Administration (SSA) says errors exist in up to 4 percent of its files.

DHS says that because of improvements it has made to the combined database system, the current E-Verify error rate is actually one-tenth that, 0.4 percent. Some of these improvements include using DHS immigration data instead of SSA records for naturalized citizens, for whom the error rate can be as high as 10 percent.

So naturally, each side uses the number most convenient to its argument.

According to the most recent Bureau of Labor Statistics report, there were 146 million people in the U.S. workforce as of May 2008. The Congressional Budget Office estimated in June 2007 that with around 60-65 million new hires a year, plus 10 million repeat verifications annually, a nationwide employment verification system would take 75 million queries a year.

Using the higher SSA error rate, 2.6 million workers a year would have to fix their records to gain employment if E-Verify is mandated. Using DHS figures, 260,000 workers would have to correct errors.

Such an influx would “overwhelm the Social Security Administration, who don’t have the resources to deal with the thousands of people who will be flooding their offices or trying to fix their records so they can work,” says Michele Waslin, senior policy analyst at the Immigration Policy Center, an immigrant advocacy research group. “So ultimately this ends up hurting Americans who are retired or disabled who want to collect their benefits.”

Sparapani said SSA is already overburdened and points to a Government Accountability Office report from May that says “despite SSA efforts to manage staffing reductions, customers experienced longer waiting times and more unanswered calls to field offices.” The report also said it found 51 percent of calls to field offices go unanswered, which E-Verify adversaries say will be another hurdle for workers trying to make appointments to correct errors.

If “somehow you can’t get to Social Security in eight days . . . you have absolutely no recourse,” Sparapani said. “And if we move to a mandatory system, there is nowhere for you to go because every single employer is going to have to deny you work.”

But a closer look at those numbers would seem to lessen the potential impact on SSA.

There are 1,300 SSA field offices, according to the agency’s Web site.

“If you divide up the number of people that this could possibly happen to, then the workload on SSA field offices is really minimal,” said Jessica Vaughan, senior policy analyst with the Center for Immigration Studies, a group that favors reduced immigration levels.

Using the upper and lower government approximated rates and assuming that errors will be equally dispersed geographically, a field office could intake an additional 200 to 2,000 customers a year, between about one and 10 per workday.

“Correcting a mismatch is really quite simple,” said Mark Lassitier, spokesman at SSA. “It takes a few weeks for a person to get the [new Social Security card]. The database is corrected almost in real-time.”

Supporters acknowledge that the process can be burdensome, but point out that it is much to the employee's advantage to have accurate records. E-Verify only requires information that is already provided in an I-9 employment verification form that is required by law (PL 99-603).

And missing a day of work is certainly a good trade-off for losing your job altogether.

### **States of Mind: California and Arizona Divisions**

There are 66,000 employers using E-Verify and 4 million employment queries were run in 2007, of which 99.5 percent were verified instantaneously, according to DHS.

Created as a pilot program in a 1996 immigration law (PL 104-208) the authorization for E-Verify will sunset Nov. 30 without congressional action. Several bills addressing employment verification are pending in Congress. One measure (HR 4088) introduced by Rep. Heath Shuler, D-N.C., would phase in mandatory use of E-Verify over seven years.

While not specifically addressing E-Verify, a June 16 federal appeals court decision could complicate any expansion of the program.

The Ninth Circuit Court of Appeals in San Francisco ruled that employees can't be fired because the Social Security numbers they submit are different from the government's records. Judge Cynthia Holcomb Hall ruled that 33 Los Angeles janitors fired in 2003 over Social Security number mismatches had to be reinstated with back pay.

In her opinion, Holcomb wrote that a mismatch "does not automatically mean that an employee is undocumented or lacks proper work authorization. In fact, the SSA tells employers that the information it provides them 'does not make any statement about . . . immigration status.' "

So, if lack of proper documentation doesn't make a worker undocumented, how can anyone be surprised that estimates of error rates vary dramatically?

Part of the reason those estimates are so disparate is because use of the system is voluntary. The experience of self-selected employers, who might not hire large numbers of immigrants, cannot necessarily be extrapolated as adequately representative of what would occur if use of the system were to be mandated nationally.

The one place where it has been mandated — Arizona — is not yet proving to be much better of a laboratory.

When asked about the states's experience thus far with mismatch errors and the appeal process, Ann Seiden, spokeswoman for the Arizona Chamber of Commerce, said, "We haven't heard that many stories about that happening."

But, she added, “it hasn’t been a problem-free experience by any means. Probably the greatest challenge is on the education side and getting every Arizona business up to speed on what to do and what is required.”

She said the most recent statistics show that only 23,000 out of 150,000 businesses in the state have registered to use E-Verify.

That would seem to indicate that many employers in the state are not taking the law all that seriously. Multiply that by 50, and the problem of error rates could begin to pale before the problem of rogue employers not following the rules.

Grisella Martinez, an immigration policy analyst for the pro-immigration National Immigration Law Center, said government reports show that often “employers don’t tell employees that there’s been a tentative non-confirmation,” the status E-Verify gives when a mismatch occurs and when the eight-day window to appeal an error begins. She says other employers encourage employees not to contest mismatches because of the effort and time, which can block them from future employment with other employers that use E-Verify.

Martinez referred to a September 2007 study conducted by Westat on the E-Verify precursor, called Basic Pilot. The 250-page report says “the rate of employer non-compliance is still substantial, which decreases the ability of the program to reduce unauthorized employment and diminishes the effectiveness of safeguards designed to protect the rights of work-authorized employees who obtain erroneous tentative nonconfirmations.”

“Even though these things are prohibited, there are no actual checks to make sure the employers aren’t engaging in that with the data,” Martinez said. “There currently is no appeals process, so the next time the person goes to get a job it will also come up again that the person is not eligible to work.”

So, there is a system. It’s voluntary. Many would like to make it mandatory.

There are, by best estimates, more than 12 million illegal immigrants in the country, perhaps half or more of them in the workforce.

If you are a U.S. citizen, the potential exists for transposed numbers on a government form to cost you your job.

Which is a bigger problem?

It all depends on your state of mind.