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E-Verify: Strengths, Weaknesses, and Proposals for Reform

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SUMMARY

As comprehensive immigration reform has receded from the current debate, the question of whether the federal E-Verify employment verification program should be made mandatory for employers, either on its own or in combination with other more targeted immigration policy reforms, is receiving new attention in Congress and elsewhere. This Insight provides a short history of E-Verify; identifies its strengths, weaknesses, and main areas of concern; and makes recommendations about how it should be strengthened and expanded.

An effective electronic eligibility verification system is an essential component of the US immigration system and has been rightly at the center of recent immigration policy debates. However, notwithstanding important steps taken by US Citizenship and Immigration Services (USCIS) to increase the system's timeliness, accuracy rates, and oversight of employer compliance, E-Verify remains vulnerable to identity fraud and employer misuse, and offers no ability to detect off-the-books employment. The system also is costly for workers, employers, and taxpayers. These problems are likely to be exacerbated if vast new numbers of employers are required to use E-Verify. As a result, enactment of new E-Verify mandates without broader immigration reform may do more to harm the economy and US workers than to deter illegal immigration and to protect US jobs.

In the near term, the most important reforms to E-Verify are further measures to reduce fraud and to improve the system's performance for good-faith employers and legal workers. USCIS already is exploring a pair of pilot projects that may be important steps in this direction and which merit particular attention and evaluation: expanding photo screening and enabling a worker self-check system. Others have proposed adding a biometric feature to E-Verify, which also could be tested on a pilot basis, though a fully biometric E-Verify would raise additional concerns about the system and add substantially to program costs.

Any new E-Verify mandate runs a high risk of adverse unintended consequences, however, so changes should be phased in gradually and evaluated against concrete performance benchmarks. And the most promising strategy for successful expansion of E-Verify is to link new employment verification mandates to a targeted or comprehensive immigration reform effort. Only then would employers and current unauthorized workers have positive incentives to use the program and comply with its requirements.

I. Introduction

As the 112th Congress gets underway with Republicans back in the majority in the House of Representatives, employer enforcement and E-Verify have emerged as the first topics for hearings and action by the House Judiciary Committee, which has jurisdiction over immigration matters.

E-Verify is the mostly voluntary system that allows employers to check work eligibility by verifying workers' names and identity data against federal databases. The verification system has been at the center of proposals for comprehensive immigration reform since 2006, and at least four different bills were offered in the 111th Congress to require all US employers to use it.[1]

Creating an effective electronic eligibility verification system is a goal that unites the disparate sides of the US immigration debate because giving employers greater certainty about whether an employee is authorized to work in the United States is the only fair way to hold them accountable for having a legal workforce, and ultimately to lessen the jobs magnet that attracts most illegal immigration.

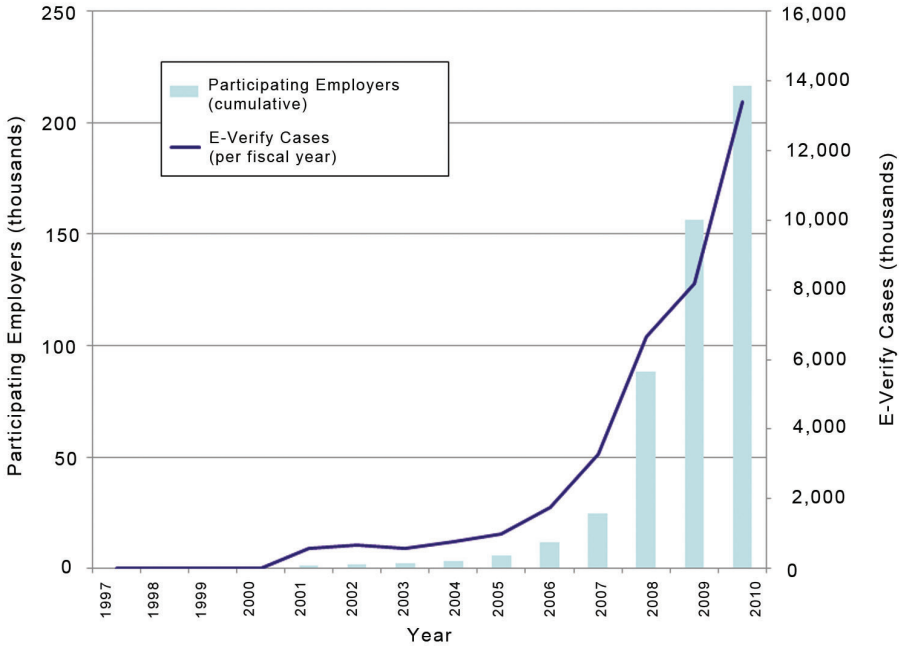
But after five years of dramatic growth in E-Verify enrollments and verifications, it is unclear how E-Verify affects hiring practices, especially in industries that rely more heavily on foreign workers. E-Verify has been criticized for high error rates and other adverse effects, and some

have argued that to be effective E-Verify should be linked to a new biometric identity system. This Insight summarizes the system's strengths and weaknesses, and evaluates proposals to expand E-Verify and to combine it with biometric screening.

II. Brief History of E-Verify

Congress in 1986 considered and rejected a proposal to create a call-in electronic verification system as part of enacting employer sanctions in the *Immigration Reform and Control Act* (IRCA). The origins of E-Verify came ten years later when the *Illegal Immigration Reform and Immigrant Responsibility Act* (IIRIRA),[2] called for pilot programs to test three separate electronic screening systems. Of the three, the program known as the Basic Pilot — launched in 1997 — was the most viable. It was very small (fewer than 5,000 employers) until 2005, when the Bush administration undertook a series of reforms to strengthen and promote the program, including by expanding its Web-based services in 2006 and renaming the program E-Verify in 2007. Enrollment in E-Verify has surged since 2005, reaching 216,721 employers as of October 2010, with 13.4 million queries submitted to the system in fiscal year (FY) 2010 (see Figure 1).[3] E-Verify now screens more than one in five new hires in the United States, though only about one in 25 businesses have enrolled in the system.

Figure 1. Employers Enrolled in Basic Pilot/E-Verify and Cases Verified, FY 1997-2010



Source: US Citizenship and Immigration Services (USCIS), "E-Verify History and Milestones," (Washington, DC: USCIS, 2010).

For most employers, enrollment in E-Verify is voluntary, but employers who have enrolled in E-Verify must use it for all new hires. Several groups of employers are required by law to use the program for new hires, including federal agencies and federal contractors and subcontractors and certain employers in 14 states (see Table 1).[4] In the case of federal contractors, employers are also required to verify certain existing employees. And state laws require all employers in Arizona, Mississippi, South Carolina, and Utah to use E-Verify, though Arizona's mandatory E-Verify law is the subject of a federal lawsuit that is presently before the US Supreme Court. The outcome could affect Arizona's requirement as well as other state E-Verify laws.

Table 1. E-Verify Users by State and State E-Verify Laws (as of January 22, 2011)

State	Employers Enrolled	States with Verification Mandates and Year of Enactment
Alabama	2,328	
Alaska	427	
Arizona	35,988	All employers (2008)
Arkansas	1,210	
California	20,800	
Colorado	6,775	Public contract recipients (2006)
Connecticut	1,661	
Delaware	510	
District of Columbia	1,521	
Florida	11,067	Public agencies (2011)
Georgia	18,166	Public contracts (2007); public agencies (2009)
Hawaii	722	
Idaho	934	Public agencies (2006)
Illinois	6,061	
Indiana	2,480	
Iowa	1,450	
Kansas	2,229	
Kentucky	1,545	
Louisiana	1,924	
Maine	427	
Maryland	4,296	
Massachusetts	3,708	
Michigan	3,178	
Minnesota	3,833	Public agencies and contracts (2009)
Mississippi	3,949	All employers (2009)

Missouri	22,061	Public agencies and contracts (2008)
Montana	464	
Nebraska	2,821	Public agencies and contracts (2009)
Nevada	1,817	
New Hampshire	619	
New Jersey	4,856	
New Mexico	1,139	
New York	6,886	
North Carolina	5,625	Public agencies (2007)
North Dakota	335	
Ohio	3,952	
Oklahoma	3,254	Public agencies (2007) and contracts (2008)[a]
Oregon	2,299	
Pennsylvania	4,858	
Rhode Island[b]	2,819	
South Carolina	7,247	Public agencies (2008); contracts (2009); all employers (2010)
South Dakota	371	
Tennessee	3,383	
Texas	13,419	
Utah	4,319	Public agencies and contracts (2009); all employers (2010)
Vermont	186	
Virginia	6,706	Public agencies (2012)
Washington	4,073	
West Virginia	399	
Wisconsin	2,268	
Wyoming	344	
Total	**243,709**	

Notes: [a] A 2010 federal appeals court ruling upheld Oklahoma's HB1804's E-Verify requirement for state contractors and public agencies but overturned a requirement that all employers use the system.
[b] Rhode Island required state agencies and contractors to use E-Verify beginning in 2008, but the state's E-Verify mandate was rescinded by Governor Lincoln Chafee in January 2011.

Sources: E-Verify users from USCIS, *Employment Eligibility Verification Program Statistics* as of January 22, 2011. State E-Verify laws from National Immigration Law Center (NILC), *E-Verify State Laws, Executive Orders, and Local Ordinances* (Washington, DC: NILC, 2011), www.nilc.org/dc_conf/flashdrive09/Worker-Rights/emp11_e-verify-laws-summary-chart-2009-11.pdf; and National Conference on State Legislatures (NCSL), "E-Verify: Frequently Asked Questions," www.ncsl.org/default.aspx?tabid=13127.

III. E-Verify Prevents Some Types of Document Fraud

E-Verify strengthens immigration enforcement because it detects the most common types of fake IDs. Without E-Verify, employers can comply with the requirements of US immigration law — i.e., by reviewing documents proving identity and work eligibility and by recording workers' names, dates of birth, social security numbers, and (for noncitizens) alien identification numbers on an I-9 form — but still hire an unauthorized worker because the worker (with or without the employer's knowledge) presents fraudulent documents. About three-quarters of unauthorized workers are believed to rely on fraudulent documents to obtain employment.[5]

E-Verify disrupts this model of unauthorized employment because most fraudulent documents cannot be matched to a valid record in the Social Security or Department of Homeland Security (DHS) databases.

Thus, E-Verify gives employers a tool to detect fake IDs and to avoid unknowingly employing an unauthorized immigrant. Even accounting for database errors (see below), E-Verify likely allowed employers to screen out about 166,000 unauthorized workers in FY 2009.[6] The system's ability to successfully identify a large number of unauthorized immigrants strengthens employers' ability to ensure a legal workforce, and is a major step toward reducing the jobs magnet that motivates most illegal immigration.

IV. E-Verify Is Vulnerable to Identity Fraud and Employer Noncompliance

At the same time, E-Verify does not reliably prevent unauthorized employment because the system remains vulnerable to identity fraud and to nonuse of the system by registered employers. Identity fraud is a problem for E-Verify because while the system usually can confirm whether or not a name and social security or alien identification number exist in a federal database, the system cannot confirm whether a name and identifying number actually belong to the worker being hired.[7] As a result, the system is vulnerable to an unauthorized worker using borrowed or stolen identity documents or fraudulent documents that contain borrowed or stolen data to be confirmed through E-Verify. Employers may be complicit in identity-fraud schemes, including by providing workers with someone else's identity data or by using the same identity data to verify multiple workers. E-Verify also cannot reliably detect when employers who are using E-Verify fail to screen some or all of the workers they hire.

The scope of these problems is difficult to pinpoint because identity-fraud cases resemble successful (accurate) confirmations; and nonuse of the system does not leave a paper trail or electronic footprint. One method for estimating the prevalence of illegal nonuse is to compare the total number of workers screened through E-Verify to the estimated number of workers hired by employers who are required to use the system. Using this methodology, the

Westat Corporation, in one of an ongoing series of evaluations it has conducted for DHS, estimated that two-thirds of new hires in Arizona (by 17,000 businesses) in June 2008 likely were not submitted to E-Verify, even though all employers in the state were required to use the system beginning in January 2008.[8] And an audit by the Social Security Administration (SSA) Office of the Inspector General found that SSA — a federal agency required to use E-Verify for all new hires — failed to use the system for 19 percent (1,767) of its new hires in FY 2008 and 2009.[9]

More generally, the erroneous confirmation rate can be estimated by comparing the number of E-Verify nonconfirmations to the estimated number of unauthorized workers being screened through the system (i.e., to the number of cases that should be nonconfirmed). Using this methodology, Westat estimated in December 2009 that about 54 percent of unauthorized workers screened through E-Verify in April-June 2008 (56,000 people) were incorrectly confirmed by the system, usually because they used borrowed or stolen identity data.[10] This means about 3.4 percent of E-Verify's confirmations during this period were mistakes.[11] As Westat observed, "this finding is not surprising, given that since the inception of E-Verify it has been clear that many unauthorized workers obtain employment by committing identity fraud that cannot be detected by E-Verify."[12] Based on an analysis of FY 2009 data made available by USCIS and assuming that the ratio of unauthorized workers screened by the system to the overall unauthorized population is similar to Westat's 2008 estimate, it appears that the system continues to confirm unauthorized workers at a similar or slightly higher rate,[13] and that most unauthorized immigrants who seek employment with employers who use E-Verify are confirmed as work authorized.

V. Erroneous Nonconfirmations

In addition to these limitations to E-Verify's effectiveness, the program is controversial because it erroneously nonconfirms some legal workers and imposes additional costs on US workers and businesses.

Because of database and user errors, E-Verify does not always successfully confirm the eligibility of US citizens, lawful immigrants, and other legal workers.[14] The rate of erroneous nonconfirmations is unknown because some legal workers fail to correct these mistakes or update their records, in which case they show up in the statistics as unauthorized workers. Westat used a statistical model to estimate that about 0.8 percent of all E-Verify queries in April-June 2008 resulted in erroneous tentative nonconfirmations.[15] A survey by the Los Angeles County Human Resources Department found that a total of 2.7 percent of the county's E-Verify queries in 2008 and 2.0 percent in 2009 resulted in erroneous tentative nonconfirmations.[16]

An accuracy rate for legal workers of 98-99 percent, based on these findings, represents substantial improvement over the system's earlier performance.[17] Overall, the proportion of cases receiving tentative nonconfirmations (TNCs) fell from 8 percent in 2004-07 to just

2.6 percent in FY 2009.[18] The drop in the TNC rate and increase in system accuracy reflect a number of successful enhancements to the program implemented by USCIS over the last four years, including a system implemented in 2007 to require employers to double check for data entry errors, an automatic check against USCIS naturalization databases prior to issuing an SSA TNC based on a citizenship status mismatch (the so-called Naturalization Phase I enhancement) implemented in 2008, an automatic check against passport records implemented in 2009 for employees using passports to prove their identity, and also in 2009, improved recognition of European date formats and other clerical errors.[19]

Despite these improvements, however, the number of erroneous nonconfirmations as a share of all TNCs remains alarmingly high: 22 percent according to Westat's model-based estimate and 95 percent according to Los Angeles County's survey.[20] Erroneous nonconfirmations are problematic for four main reasons. First, employers do not always notify workers of these errors,[21] and do not always provide workers with the information needed to correct them.[22] In some cases, workers are not notified of tentative nonconfirmations because employers improperly use E-Verify as a filter to "prescreen" job applicants, and then fail to hire or notify applicants who are the subject of tentative nonconfirmations.[23] Thus, some employers fire legal workers (or avoid hiring them) because of E-Verify errors that workers are not given a chance to correct.

Second, even when workers are notified, the US Government Accountability Office (GAO) reports that workers may face "formidable challenges" correcting them.[24] Of workers interviewed by Westat who successfully corrected nonconfirmations, 22 percent spent more than $50 to do so and 13 percent spent more than $100. Half of these workers had to take time off work to correct a nonconfirmation, including 14 percent who took off two or more days of work.[25] These findings understate the actual cost of correcting E-Verify errors because they exclude an unknown number of workers who were discouraged by the process and failed to correct erroneous nonconfirmations.

Third, erroneous nonconfirmations produce discriminatory outcomes, primarily affecting citizens with foreign names, naturalized citizens, and legal immigrants. Biased outcomes are partly a function of database errors, which are more common in DHS than SSA records,[26] and of errors related to misspelled names and name-order mistakes, which are more common with foreign names. Thus, among the subset of erroneous nonconfirmations that were corrected in 2008, error rates were at least 30 times higher for naturalized citizens and 50 times higher for legal nonimmigrants (temporary workers) than for native-born citizens.[27] These numbers understate the actual degree of discriminatory outcomes, however, because they do not account for prescreening and other biased implementation of E-Verify, described above. Such practices also are more likely to affect recent immigrants and other workers whom employers suspect of being unauthorized.

Finally, erroneous nonconfirmations are also costly to employers because they

add time and uncertainty to the hiring process. While 95 percent of E-Verify queries result in immediate confirmations and an additional 1 percent were resolved within three days,[28] tentative nonconfirmations required an average of 7.6 to 12.5 days to be resolved.[29] Employers are not permitted to suspend workers or delay training during this period even though 89 percent of TNCs eventually result in nonconfirmations (including some erroneous nonconfirmations).

These numbers mean that to be compliant, employers are required to invest valuable training resources in workers who eventually will be dismissed. Not surprisingly, employers' top priority for reforming E-Verify would be to permit them to screen job applicants prior to the start of employment to avoid this situation.[30] Also unsurprisingly, many employers seek to avoid these lost investments by suspending workers or taking other action against them, in violation of E-Verify rules, on the basis of a tentative nonconfirmation.[31]

VI. Additional Concerns

E-Verify is also controversial for at least three additional reasons:

- The growth of the E-Verify system exposes Americans to greater risk of identity theft because the system makes stolen identity data more valuable as a key to employment, and because the system gives a larger number of private actors and federal agents access to identity data through their interactions with E-Verify databases. Westat found that about 32 percent of employers reported that they notified workers about TNCs in public settings or had one or more employees who reported being notified of a TNC in a non-private setting.[32] The system also contributes to an already existing trend of increased aggregation of federal databases, as employment data and identity data — often now including photographs — are linked to DHS travel and immigration records. These linkages make the data stored within integrated databases still more valuable to data thieves.
- Employers may intentionally misuse E-Verify to obtain information about their workers and use the information during negotiations over wages or to block efforts by workers to organize unions or to exercise other labor rights.[33]
- Employers who move their operations off the books also may be more likely to violate minimum wage, health and safety, and other worker protections. Thus, unauthorized employment in jurisdictions that require employers to use E-Verify may result in worse exploitation of unauthorized workers than in jurisdictions without E-Verify.

VII. Efforts to Prevent Identity Fraud and Employer-Misuse Have a Limited Impact

The limitations and adverse consequences of E-Verify — identity fraud,

employer nonuse, and employer misuse and abuse — are matters of longstanding concern, and the Bush and Obama administrations have taken a number of steps to address them, including by creating a photo-matching tool in E-Verify and a monitoring and compliance division within USCIS. Nonetheless, these efforts have had a limited impact, and fraud and various forms of employer misuse are likely to persist in the absence of major reforms to the overall immigration system.

A. Photo Matching

Since 2007, USCIS has incorporated a photo-matching feature to help prevent identity fraud. Under this enhancement, when workers use lawful permanent resident cards ("green cards"), US government-issued employment authorization documents, US passports, or US passport cards to prove their identity and work eligibility, employers automatically receive a copy of the photograph associated with the worker's document. As part of the E-Verify screening process in these cases, employers are required to confirm that the photograph on the document presented by the worker matches the photograph in the DHS or State Department database. The photo-matching tool is a logical extension of E-Verify and successfully prevents a particular form of identity fraud: cases in which workers use sophisticated fake IDs that contain identity data belonging to a legal worker, but change the picture on the document.

Photo matching has two important limitations, however. First, photo matching is limited to the identity documents named above, whereas the overwhelming majority of workers in the United States use other documents to prove their identity, primarily driver's licenses. As a result, only 393,574 out of 14.9 million E-Verify cases (2.6 percent) were subject to photo matching between October 2009 and August 2010, resulting in 1,569 nonconfirmations (0.01 percent).[34] Photo matching could become more effective if it included state motor vehicle data, but the use of driver's license data in the photo-matching tool is subject to a number of technical and legal challenges.[35] Thus, current plans to expand photo matching to driver's license data are limited to a pilot agreement with a single state (Mississippi) set to begin next year, and data sharing initially will be limited to license data but will not include actual photographs.

Second, as with the current I-9 document-based system, the photo-matching tool relies on the good-faith compliance of employers who are required to compare the photograph in the worker's record to the document presented. Thus, while the system provides employers with a new tool to screen out certain fraudulent documents, it will not prevent or detect intentional noncompliance by employers who accept a card that does not belong to the person being hired or who report a photo match where one does not exist. Similarly, GAO reports that unscrupulous employers in Arizona have begun directing workers they believe to be unauthorized to provide identity documents other than green cards and employment authorization documents in order to avoid triggering the photo-screening tool.[36]

B. USCIS Monitoring and Compliance Branch

USCIS created a Monitoring and Compliance Branch in 2007 to look for several different patterns that suggest identity fraud or employer misuse of E-Verify in cases in which:

- employers use the same social security number (SSN) across all E-Verify transactions, suggesting identity fraud;
- employers enroll in the system but fail to use it to verify any new hires, suggesting off-the-books employment;
- an employer terminates a worker on the basis of a tentative nonconfirmation, suggesting that the worker was prescreened and not given a chance to correct an erroneous nonconfirmation; or,
- workers are screened through E-Verify after the third day of employment, existing workers are reverified, or workers who were hired before 1986 are verified, all suggesting that the employer may be using the system to retaliate against workers for labor activism (excluding some federal contractors who are required by the Federal Acquisition Regulation to rescreen certain workers).[37]

USCIS deserves credit for establishing the Monitoring and Compliance Branch — a direct response to earlier criticisms of E-Verify. The branch reports that it notified 16,125 employers about some form of noncompliance in FY 2010, representing slightly over 2 percent of E-Verify worksites, and that about 80 percent of employers who were notified adjusted their behavior after being contacted.[38]

GAO reports that Monitoring and Compliance Branch staffing increased from 21 in April 2008 to 52 in November 2009, and that 44 additional personnel were slated to be hired in FY 2010-11. Notwithstanding these gains, the Monitoring and Compliance Branch is unable to prevent identity fraud and employer misuse for three main reasons.[39]

First, at least for now, the branch's monitoring activities rely on manual audits of E-Verify transactions, meaning that only a small sample of employer records is monitored.[40] E-Verify officials report that automated auditing will begin in FY 2012 for certain types of suspicious behaviors.

Second, even once automated auditing is in place, this type of remote oversight will be unable to detect many of the most common forms of identity fraud and employer misuse. In particular, audits will not detect cases of individualized identity fraud (i.e., where each worker at a worksite use different fraudulent identity data), cases in which employers only screen some of their workers, or cases in which employers selectively inform workers about E-Verify procedures because none of these illegal behaviors produce easily recognizable patterns.

Third, USCIS has no authority to enforce E-Verify requirements, and US Immigration and Customs Enforcement (ICE) devotes limited resources to enforcement of E-Verify-related violations.[41]

GAO reports that between December 2008 and August 2010, USCIS referred just three cases to ICE for investigation of worksite violations based on non-compliance with E-Verify rules, that ICE only opened an investigation into one of the three, and that ICE did not obtain a conviction in that case.[42] Moreover, most forms of employer misuse — including prescreening of job applicants, use of E-Verify to retaliate against workers for labor activism, and discriminatory application of E-Verify rules — are prohibited under the E-Verify Memorandum of Agreement (MOA) between USCIS and ICE, but are not subject to any civil or criminal penalty. Thus, there is no record of an employer ever being sanctioned for misusing E-Verify in one of these ways.

VIII. Proposals to Expand E-Verify

Many lawmakers have proposed to require all US employers to use E-Verify for all new hires or for new and existing employees, either as a stand-alone enforcement measure or as part of a broader immigration reform bill. What are the likely costs and benefits of new E-Verify mandates?

The argument for expanding E-Verify is that a partial system is not an effective deterrent to illegal immigration and places compliant employers at a competitive disadvantage. Under the current system, if E-Verify identifies an unauthorized worker and causes the employer to terminate employment, the worker may be hired by another firm that does not use E-Verify. Unauthorized immigrants still have employment opportunities, and employers who use E-Verify face the double penalty of added costs during the hiring process and competition from other firms that may save money by employing unauthorized workers. Thus, if all employers were required to use E-Verify, it would level the playing field and unauthorized immigrants would find it more difficult to find work in the United States, forcing some people to return to their countries of origin, and discouraging future unauthorized inflows.

While a universal version of E-Verify therefore clearly should be a priority, new E-Verify mandates also would substantially increase the costs and adverse consequences identified above; and the real-world downstream effects of increased worksite enforcement are difficult to predict.

First, the costs of E-Verify to US taxpayers would increase substantially if the program were made mandatory for all US employers, and even more so if employers were required to reverify existing workers. Current spending on E-Verify averages about $100 million per year,[43] and USCIS projects that at the current rate of growth the program will require another $508 million through fiscal year 2020, though the actual number may be considerably higher.[44] But USCIS previously estimated that a mandatory version of the program would cost four times as much; $765 million over four years, and $838 million if existing workers also were reconfirmed.[45] And these agency projections are much lower than estimates provided by the independent Congressional Bud-

get Office, which reported in 2007 that implementation of a mandatory electronic employer verification system would cost $3 billion in fiscal years 2008-12 and $6.1 billion in FY 2008-17.[46]

In addition to these direct costs, a mandatory version of E-Verify without a workforce legalization program would reduce state and federal payroll tax revenues because many employers would move existing unauthorized workers off the books to avoid detection. Anecdotal evidence and preliminary research on tax payment patterns suggests off-the-books employment has increased in Arizona since E-Verify became mandatory there.[47] And the Congressional Budget Office estimated in 2008 that to require all employers to participate in E-Verify would result in lost federal tax revenues of $17.3 billion over a ten-year period as a result of employers moving existing unauthorized workers from the formal to the informal economy.[48]

Second, the number of erroneous nonconfirmations and other costs to US employers and workers also would increase under a mandatory system. Assuming no change in error rates, using E-Verify for all new hires would result in the erroneous nonconfirmation of about 600,000 US workers per year, resulting in lost wages or other adverse consequences for 60,000 to 280,000 of them.[49] Employers would face hiring delays about 1.6 million times per year, resulting in about 14 million work-days of lost productivity because of unauthorized immigrants who would be kept on employers' payrolls pending a final nonconfirmation.[50] At current rates, employers also would be expected to spend about $150 million to set up E-Verify and $600 million to maintain the system.[51] Identity theft associated with E-Verify also would increase, though employment verification currently accounts for a very small share of identity theft overall.[52]

Yet the actual costs of a mandatory system would be much higher than those predicted by a simple extrapolation of current costs because the users under a mostly voluntary system are disproportionately large firms with sophisticated HR departments and/or federal contractors — a profile that differs in important ways from average US employers. While 89 percent of US businesses have fewer than 20 employees and 98 percent have fewer than 100, only 32 percent of E-Verify users have fewer than 20 employees and 68 percent have fewer than 100.[53] And a study of businesses not using E-Verify found that about one-quarter of them lacked staff with sufficient skills to begin using E-Verify, and that about one in ten small businesses did not have adequate computer or Internet connections to use the program.[54] Thus, employers who use E-Verify because they are required to do so by state or local law or by a client are significantly less satisfied with the program than employers who use it voluntarily; and employers in Arizona (including those who enrolled in the system in response to state law) are less likely than employers in other states to comply with E-Verify's required worker protections.[55] For these reasons, per capita costs likely would increase considerably under a mandatory E-Verify system, though rising costs may be partially offset by continued improvement in system accuracy and better oversight.

Most importantly, to require broader participation in E-Verify without creating legal opportunities for employers to hire immigrant workers is a risky strategy because the downstream

impact of enhanced worksite enforcement is impossible to predict. Indeed, after IRCA made it illegal to employ unauthorized immigrants, unauthorized employment remained widespread (because of the proliferation of false documents), but wages fell and discrimination against Latino workers increased, regardless of their legal status.[56] New E-Verify mandates *may* produce their desired effect and cause employers who now hire unauthorized immigrants to replace them with legal workers; but poorly crafted mandates could lead instead to more identity fraud and off-the-books employment, resulting in lost revenues and deteriorating working conditions. Alternatively, the higher cost of doing business and the difficulty of replacing unauthorized immigrants with legal workers could lead some employers to go out of business or to move their operations abroad, in which case new E-Verify mandates without broader immigration reforms would undermine the economic recovery.[57]

IX. Proposals to Create a Biometric Verification System

In addition to expanding the program, some lawmakers propose to strengthen E-Verify by adding a biometric identifier, either through a secure ID card or by requiring employers to collect workers' fingerprints or other data.[58]

In general, better ID cards or a biometric version of E-Verify would combat identity fraud and likely would be more successful at reducing unauthorized employment than the current version of E-Verify. But biometric technology is imperfect, and fingerprints in particular may not be the best technology for reducing fraud, partly because many workers do not have usable fingerprints.[59]

Implementing a national biometric ID system also would require the government to capture fingerprints (or some other biometric data) for 160 million US workers, and possibly to issue new cards, at a cost of tens of billions of dollars and hundreds of thousands of agency work years.[60] Requiring employers to obtain card scanners would add to this expense; and mandating that employers recheck workers' fingerprints — the only way to link a biometric card to its owner — would add substantially to the cost of the system, while also leading to many more fingerprinting errors and erroneous nonconfirmations. Thus, to add a biometric component to a mandatory E-Verify system would make the system prohibitively expensive from both fiscal and economic growth standpoints.

Perhaps the most important question about a biometric card is whether Americans are ready to be fingerprinted as a precondition for eligibility to work. Some people will fear that a biometric card eventually would be used for other purposes — just like today's Social Security number — and some will object to such a system as the ultimate big government intervention in private labor markets. These concerns are partly philosophical, but they would undermine the integrity of a new verification system if a substantial number of Americans refuse to comply with the law, or if these concerns cause a biometric system to be limited to immigrants.

X. Conclusions and Recommendations

In sum, while E-Verify gives employers a way to detect certain types of ineligibility to work, it is vulnerable to identity fraud and employer misuse, and so does not prevent unauthorized employment. The partial benefits of E-Verify come with a number of added costs: adverse consequences for workers and employers, including lost employment opportunities for some US workers, burdensome procedures to correct some database errors, discriminatory outcomes, lost productivity because of higher costs of hiring new workers, greater incidence of identity theft, downward pressure on wages and working conditions, and higher costs of doing business generally. Efforts to correct these problems have had a limited impact, and likely will confront continued challenges in the future.

To a large degree, the limited effectiveness and adverse effects of E-Verify reflect a misunderstanding of what should be expected of the program or of any employment eligibility verification system. E-Verify cannot force employers to hire legal workers; it can only give them a better tool to distinguish between legal and unauthorized workers. Bad-faith employers and employers who believe their businesses depend on unauthorized workers to survive — i.e. employers who currently hire unauthorized workers despite knowing or suspecting they may be unauthorized — likely will continue to do so even if they are required to use E-Verify.

Twenty-five years after IRCA's passage and after a generation of steadily increasing investments in immigration enforcement, the assumption that US labor markets and immigration patterns can be reshaped through enforcement efforts alone seems dubious at best, when one considers the unauthorized population has grown to more than 11 million and return flows have been limited even in the face of the recent economic downturn. As long as the demand for unauthorized employment remains greater than the expected penalty for noncompliance, then the most likely effect of a new E-Verify mandate would be to push unauthorized employment deeper into the underground economy and increase the incentives for fraud. To make E-Verify mandatory without addressing these concerns sets the system up for a larger failure, undermining its credibility among a broader set of workers and employers.

Thus, the immediate policy priorities with respect to E-Verify should be to continue existing efforts to reduce identity fraud and improve system accuracy, and to expand and evaluate pilot programs testing additional improvements. Two such programs are already slated to begin this year and should be given a chance to succeed: an expansion of the photo-matching program to include state driver's license data, and a worker portal "self-check" system that will permit workers to "preverify" their eligibility prior to accepting new employment and to be notified if someone else attempts to use their number. Additional pilot programs could permit targeted data sharing between DHS and the Internal Revenue Service to give enforcement agents better tools to detect possible cases of identity fraud, and/or create an optional biometric system within a particular industry (possibly building on the Transportation Worker Identification Credential card) or region.[61]

Second, any new E-Verify mandates and/or biometric or other identification technology should be phased in gradually and should be evaluated on an ongoing basis against clearly articulated performance benchmarks. Time and again, the history of US immigration policy — and the history of worksite immigration enforcement in particular — finds that well-intentioned reforms may produce complex unintended consequences, often leaving stakeholders worse off than they were before. In the case of E-Verify, we have just early analyses of the effects of the dramatic growth that has occurred in the program since 2006. Moreover, much of that growth has occurred in the exceptional climate of low or negative employment growth, so little is known about how the program actually affects US labor markets.

Finally, the most promising strategy for expanding E-Verify is to link new mandates to a targeted or general legalization program for unauthorized workers and/or to employment-based visa reform. While a mandatory E-Verify requirement without such reforms would create incentives for employers and workers to look for work-arounds that undermine effective verification, linking E-Verify mandates to legalization and visa reform would have the opposite effect: encouraging the most problematic workers and employers to opt in to the system and to scrupulously comply with its requirements as a condition for earning legal status (in the case of workers) and for access to employment-based visa programs (in the case of employers). Making legalization for certain workers a building block for E-Verify growth also would dovetail with tough identification requirements likely to be included in any legalization program, and so could be a testing ground for new biometric or other identification technology.

Undoubtedly, electronic work eligibility verification is and should be a key component of the US immigration system: employers must have an effective tool to confirm the eligibility of their workforce. E-Verify is a promising platform for developing such a system, but it remains a work in progress. Continued investment in the system is needed and its expansion should be supported, but better worksite enforcement is only part of the answer; and changes to E-Verify should be taken up as part of a broader reform effort to give them the greatest chance to succeed.

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Endnotes

1 *Border Sovereignty and Protection Act*. H.R. 2083. 111th Cong., (April 23, 2009); *Employee Verification Amendment Act of 2009*. H.R. 2028. 111th Cong., (January 23, 2009); *Employee Verification Amendment Act of 2009.* H.R. 662. 111th Cong., (January 23, 2009); *Secure America Through Verification and Enforcement (SAVE) Act of 2009*. H.R. 3308 111th Cong., (July 23, 2009).

2 *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, Public Law No. 104-208.

3 USCIS, "E-Verify History and Milestones," accessed February 4, 2011. www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=84979589cdb76210VgnVCM100000b92ca60aRCRD&vgnextchannel=84979589cdb76210VgnVCM100000b92ca60aRCRD.

4 At least 25 counties and localities also had E-Verify ordinances on the books as of January 2011; see National Immigration Law Center (NILC), *E-Verify State Laws, Executive Orders, and Local Ordinances* (Washington, DC: NILC, 2011), www.nilc.org/dc_conf/flashdrive09/Worker-Rights/emp11_e-verify-laws-summary-chart-2009-11.pdf.

5 Eduardo Porter, "Illegal Immigrants Are Bolstering Social Security with Billions," *New York Times*, April 5, 2005, www.nytimes.com/2005/04/05/business/05immigration.html?_r=1.

6 Except where otherwise noted, assumptions about error rates in this report are based on the analysis of FY 2008 E-Verify data conducted for the Department of Homeland Security (DHS) by the Westat Corporation in December 2009; Westat Corporation, *Findings of the E-Verify Program Evaluation: Report Submitted to US Department of Homeland Security* (Rockville, MD: Westat Corporation, 2009), www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf. According to this analysis, 3.6 percent of all queries produced tentative nonconfirmations (TNCs), including 0.8 percent that were erroneous TNCs, meaning 22 percent of TNCs were for legal workers, and 78 percent were for unauthorized workers; see Westat, *Findings of the E-Verify Program Evaluation*: 50, 117. A total of about 213,000 cases received TNCs in FY 2009 (including 25,000 that were corrected); see, USCIS, "E-Verify Statistics and Reports," accessed February 4, 2011. www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=7c579589cdb76210VgnVCM100000b92ca60aRCRD&vgnextchannel=7c579589cdb76210VgnVCM100000b92ca60aRCRD. Assuming the same proportion of TNCs were erroneous in 2009 as in 2008, about 166,000 (78 percent of 213,000) nonconfirmations were likely issued to unauthorized immigrants.

7 See Doris Meissner and Marc R. Rosenblum, *The Next Generation of E-Verify: Getting Employment Verification Right*, (Washington, DC: Migration Policy Institute, 2009), www.migrationpolicy.org/pubs/Verification_paper-071709.pdf.

8 An estimated 25,000 employers hired new workers in Arizona in June 2008, but only about 8,000 employers submitted cases to E-Verify; Westat, *Findings of the E-Verify Program Evaluation*: 87. As of January 2011, most employers in states with mandatory E-Verify systems had not registered to use the system, with Arizona having the highest registration rate at 31 percent, followed by South Carolina (9 percent), Mississippi (8 percent), and Utah (7 percent); figures based on Migration Policy Institute (MPI) calculations from USCIS, Employment Eligibility Verification Program Statistics as of January 22, 2011; and US Census, "Statistics of US Businesses" FY 2007, www2.census.gov/econ/susb/data/2007/us_state_totals_2007.xls.

9 Social Security Administration (SSA) Office of the Inspector General, *The Social Security Administration's Implementation of the E-Verify Program for New Hires* Audit Report (Washington, DC: SSA, Office of the Inspector General, 2010): 5-6, www.ssa.gov/oig/ADOBEPDF/A-03-09-29154.pdf.

10 Westat's model produces a range of estimates between 37 percent and 64 percent; see Westat, *Findings of the E-Verify Program Evaluation*: 117. A total of 1.68 million cases were screened by E-Verify during this period, resulting in 1.62 million confirmations and 40,000 nonconfirmations. Westat estimates that 5.8 percent of workers screened through E-Verify during this period (96,000 people) were actually unauthorized; see Westat, *Findings of the E-Verify Program Evaluation*: 51-53 and B10-B12.

11 This figure reflects the percentage of cases estimated to be erroneous confirmations (3.3 percent) divided by the total percentage of confirmations (96.4 percent); Westat, *Findings of the E-Verify Program Evaluation*: 50, 115.

12 Westat, *Findings of the E-Verify Program Evaluation*: 31.

13 Westat estimated that 5.8 percent of workers screened through E-Verify in 2008 were unauthorized, compared to a national average of 5.4 percent of the US workforce at the time. The Pew Hispanic Center estimates that about 5.1 percent of the current US workforce is unauthorized; see Jeffrey S. Passel and D'Vera Cohn, *US Unauthorized Immigration Flows Are Down Sharply Since Mid-Decade* (Washington, DC: Pew Hispanic Center, 2010), http://pewhispanic.org/reports/report.php?ReportID=126. And USCIS reports that 2.3 percent (189,230 out of 8,199,304) of E-Verify cases in FY 2009 resulted in nonconfirmations. Thus, if the distribution of legal and unauthorized workers being screened through E-Verify is similar to the national workforce, about 418,165 unauthorized workers (5.1 percent of 8.2 million) likely were submitted to the system, meaning that 228,935 workers were incorrectly confirmed (55 percent of all unauthorized workers submitted to the system and 2.7 percent of the 8 million E-Verify confirmations). This figure likely underestimates the true error rate since it does not account for erroneously nonconfirmed legal workers, meaning the actual number of unauthorized workers screened out by the system was less than 189,230. The true error rate also depends on the proportion of workers screened through E-Verify who are actually unauthorized, which may not equal 5.1 percent given numerous differences between the E-Verify population and the overall workforce. The actual proportion of unauthorized workers in the E-Verify sample may be larger than the proportion in the overall population, as Westat estimated was the case in 2008, because E-Verify users are disproportionately located in Arizona and other states with a higher-than-average share of unauthorized workers, because E-Verify users are concentrated in industries which employ a higher-than-average number of unauthorized immigrants, and because unauthorized immigrants have higher turnover rates than legal workers, and therefore are hired more often. In this case, the actual false confirmation rate is higher than 55 percent. On the other hand, the proportion of unauthorized workers screened through E-Verify may be smaller than the proportion in the overall population because some employers who knowingly hire unauthorized immigrants may avoid using E-Verify including by hiring workers off the books and because unauthorized workers may avoid applying for jobs where they know E-Verify is in use. In this case, the actual false confirmation rate is lower than 55 percent. Also see Westat, *Findings of the E-Verify Program Evaluation*, Appendix B.

14 See Meissner and Rosenblum, *The Next Generation of E-Verify: Getting Employment Verification Right*, for a longer discussion of the causes of erroneous TNCs.

15 Westat's model produces a range of estimates of between 0.6 percent and 1.0 percent; see Westat,

15 Westat's model produces a range of estimates of between 0.6 percent and 1.0 percent; see Westat, *Findings of the E-Verify Program Evaluation*: 117.

16 The county conducted a total of 9,958 E-Verify queries in 2008 and 4,397 in 2009, including in some cases multiple queries for the same employee. Of the 9,958 queries in 2008: 254 queries resulted in SSA tentative nonconfirmations, of which 227 were corrected, 20 resulted in final nonconfirmations that were overturned following a subsequent verification, and seven resulted in final nonconfirmations that were not overturned and led to termination of employment; and 33 queries resulted in DHS nonconfirmations, of which 25 were corrected and eight resulted in final nonconfirmations and terminations of employment. Of the 4,397 queries in 2009: 79 resulted in SSA tentative nonconfirmations, of which 72 were corrected, six resulted in final nonconfirmations that were overturned following a subsequent verification, and one resulted in a final nonconfirmation leading to termination of employment; and 12 queries resulted in DHS nonconfirmations, of which ten were corrected and two resulted in final nonconfirmations and terminations of employment. See Chief Executive Office, "Report on County's Use of E-Verify System," (Los Angeles: County of Los Angeles, 2010), http://file.lacounty.gov/bc/q1_2010/cms1_143429.pdf, with additional data provided by Los Angeles County.

17 Intel Corporation reported in 2008 that slightly over 12 percent of its workers received erroneous TNCs ; see Intel Corporation, "Comments on Proposed Employment Eligibility Regulations Implementing Executive Order 12989 (as amended)," August 8, 2008. And the American Council on International Personnel (ACIP) describes a large firm with an erroneous TNC rate of 15 percent; see ACIP, "Comments on Proposed Rule Published at 73 Fed. Reg. 33374 (June 12, 2008)," August 11, 2008. And in an earlier Westat evaluation for DHS, a detailed case studies of five employers identified at least six workers out of 326 TNCs (1.8 percent) who received erroneous final nonconfirmations, and 31 out of 364 (8.5 percent) who were able to correct erroneous TNCs, for a total erroneous nonconfirmation rate of 10.3 percent; see Westat, *Findings of the Web-Based Basic Pilot Evaluation* Appendix E (Rockville, MD: Westat, 2007): 44-49, www.uscis.gov/files/article/WebBasicPilotRprtSept2007.pdf.

18 Government Accountability Office (GAO), *Federal Agencies Have Taken Steps to Improve E-Verify, but Significant Challenges Remain* GAO-11-146 (Washington, DC: GAO, 2010): 16, www.gao.gov/new.items/d11146.pdf.

19 GAO, *Federal Agencies Have Taken Steps to Improve E-Verify*: 17-19.

20 Calculations based on the data provided in footnotes 6 and 16.

21 According to Westat's study, while 96 percent to 98 percent of employers reported that they always notify workers of tentative nonconfirmations, only 58 percent of workers who were the subject of tentative nonconfirmations recalled being notified, and only 28 percent of personnel files Westat reviewed for workers who were the subject of TNCs included signed copies of the notification form. Westat, *Findings of the E-Verify Program Evaluation*: 104, 153-156. These and other statistics reported here are based on four different surveys conducted by Westat: an online survey of 2,320 E-Verify employers, an on-site survey of 109 E-Verify employers, a review of 1,246 personnel records at these worksites, and interviews with 424 employees from these worksites. Not all questions were asked of all respondents; and the sampling method and small sample size mean that reported percentages may not apply to the universe of all E-Verify users.

22 According to Westat's study, while 76 percent of employers interviewed claim always to explain the meaning of a TNC when workers receive them, 45 percent of these employers had at least one worker

who received a TNC and did not recall receiving an explanation, and 54 percent of workers interviewed did not recall receiving explanations of their TNCs. Westat, *Findings of the E-Verify Program Evaluation*: 154-155. A 2008 survey of 376 immigrant workers (including an unknown number of unauthorized workers) in Arizona found that 126 had been fired, apparently after receiving an E-Verify TNC, but that *none* had been notified by employers that they had received a TNC or given information to appeal the finding; see Caroline Isaacs, *Sanctioning Arizona: The Hidden Impacts of Arizona's Employer Sanctions Law* (Washington, DC: American Friends Service Committee, 2009).

23 Westat found that between 4.5 percent and 14 percent of employers acknowledged prescreening job applicants, and that 48 percent of workers at firms using E-Verify believed they were screened prior to the first day of employment; Westat, *Findings of the E-Verify Program Evaluation*: 152-153. And the SSA OIG report found that 25 percent of SSA's new hires were screened prior to being hired; SSA OIG, *The Social Security Administration's Implementation of the E-Verify Program for New Hires*: 4.

24 GAO, *Federal Agencies Have Taken Steps to Improve E-Verify*: 34. Correcting erroneous nonconfirmations is especially difficult for the estimated 21 million US citizens who lack valid identity documents, and the 13 million who do not have access to passports, birth certificates, or naturalization papers needed to prove their citizenship; see Brennan Center for Justice, *Citizens without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification* (New York: New York University, 2006), www.brennancenter.org/page/-/d/download_file_39242.pdf. At least six out of 326 workers (1.2 percent) who received TNCs in 2006-07 Westat case studies were legal workers who were unable to contest the findings because they did not understand how to do so or who tried to do so but were unsuccessful; see Westat, *Findings of the Web-Based Basic Pilot Evaluation*: E-3, E-13.

25 Westat, *Findings of the E-Verify Program Evaluation*: 203-204.

26 SSA records for native-born citizens have relatively few errors because records are usually initiated by the hospital at birth, though many citizens fail to update their SSA records following a name change. DHS databases have more errors because records may be started in more diverse locations and because records must be updated more often as a function of changes in individuals' migration and citizenship status.

27 Among erroneous nonconfirmations that were corrected, error rates were 0.1 percent for native-born US citizens, 1.0 percent for lawful permanent residents, 3.2 percent for foreign-born citizens, and 5.3 percent for legal nonimmigrants (temporary workers and others noncitizens authorized to work); see Westat, *Findings of the E-Verify Program Evaluation*: 208-211.

28 Westat, *Findings of the E-Verify Program Evaluation*: 50. In FY 2009, 97.4 percent of cases were confirmed either immediately or within three days; USCIS, "E-Verify Statistics and Reports."

29 Westat, *Findings of the E-Verify Program Evaluation*: 91-94.

30 Ibid., 181; this change was favored by 66 percent of survey respondents versus 17 percent who opposed it.

31 Ibid., 157; 20 percent to 37 percent of employers whose workers received TNCs reported suspending workers, delaying training, or taking other adverse employment consequences against a worker based on a TNC; and 47 percent of employers who reported taking no adverse action had one or more employees who believed they had faced adverse employment consequences as a result of a TNC.

32 Ibid., 202.

33 A 2008 survey of immigrant workers in Arizona found evidence of intentional employer misuse of E-Verify: 30 percent of workers were rescreened by employers after the three-day period during which screening is permitted, 16 percent were denied back wages, 10 percent were threatened with firing, 12 percent had their wages cut, 5 percent reported harassment on the job, and 7 percent reported that employers had threatened to call ICE; Isaacs, *Sanctioning Arizona*: 10.

34 GAO, *Federal Agencies Have Taken Steps to Improve E-Verify*: 22.

35 Rosenblum and Meissner, *The Next Generation of E-Verify*: 18-19.

36 GAO, *Federal Agencies Have Taken Steps to Improve E-Verify*: 22.

37 Ibid., 25.

38 Ibid., 26.

39 Also see Ibid., 25-32, on limitations of the Monitoring and Compliance Branch.

40 USCIS also has a memorandum of understanding with the Department of Justice's Office of Special Counsel (OSC) for Unfair Immigration-Related Employment Practices to allow OSC to refer cases from their hotline calls to the Monitoring and Compliance Branch for further investigation when there is potential or proven adverse action taken against an employee.

41 US Immigration and Customs Enforcement (ICE) conducted more than 3,500 audits of employers' payrolls in FY 2009-10, up from just 503 in FY 2008; see Statement of Kumar Kibble, Deputy Director, US Immigration and Customs Enforcement, before the House Subcommittee on Immigration Policy and Enforcement, *Hearing on Worksite Enforcement*, 112th Cong., 1st sess., January 26, 2011, http://judiciary.house.gov/hearings/hear_01262011.html. ICE audits focus on enforcement of employment eligibility, not on enforcement of labor rights or anti-discrimination provisions. To the extent that employer audits successfully target employers who knowingly employ unauthorized immigrants, such audits may also discourage misuse and abuse of E-Verify.

42 GAO, *Federal Agencies Have Taken Steps to Improve E-Verify*: 31.

43 DHS, *Budget in Brief FY 2009*, (Washington, DC: DHS, undated), www.dhs.gov/xlibrary/assets/budget_bib-fy2009.pdf; White House Office of Management and Budget (OMB), "Budget of the United States Government FY 2009-11," accessed February 4, 2011, www.gpoaccess.gov/usbudget/.

44 GAO described USCIS' budget estimate as "partially" comprehensive, documented, and accurate, and as "minimally" credible. GAO also reports that SSA projects $66 million in E-Verify costs in FY 2010-15, an estimate described as "substantially" comprehensive, documented, and accurate, and as "partially" credible; see GAO, *Federal Agencies Have Taken Steps to Improve E-Verify*: 48-51.

45 In addition, SSA estimated that a mandatory E-Verify program would cost that agency $281 million over four years and would require it to hire 700 new employees for a total of 2,325 additional workyears; see GAO, *Challenges Exist in Implementing a Mandatory Electronic Employment Verification System* GAO-08-895T, (Washington, DC: GAO): 4, www.gao.gov/new.items/d08895t.pdf.

46 CBO June 4, 2007, "Senate Amendment 1150 to S. 1348, the Comprehensive Immigration Reform Act of 2007," (Washington, DC: Congressional Budget Office): 31, www.cbo.gov/ftpdocs/81xx/doc8179/SA1150_June4.pdf.

47 Daniel González, "Illegal workers manage to skirt Arizona employer-sanctions law – Borrowed

identities, cash pay fuel an underground economy," *Arizona Republic*, November 30, 2008, www.azcentral.com/news/articles/2008/11/30/20081130underground1127.html.

48 Letter of Peter Orszag, Director, Congressional Budget Office, to Rep. John Conyers, Jr., Chairman of the US House Committee on the Judiciary, April 4, 2008, www.cbo.gov/ftpdocs/91xx/doc9100/hr4088ltr.pdf.

49 Calculations based on 63 million new hires per year, an overall erroneous nonconfirmation rate of 0.8 percent, and that workers encounter problems correcting such errors 10 percent to 47 percent of the time. See GAO, *Challenges Exist in Implementing a Mandatory Electronic Employment Verification System*: 10; and Westat, *Findings of the E-Verify Program Evaluation*: 117, 157.

50 Calculations based on FY 2009 USCIS statistics that E-Verify queries were resolved immediately or within three days 97.4 percent of the time and Westat finding (based on FY 2008 data) that it took an average of 7.6 to12.5 days to resolve TNCs outside this window and that 89 percent of TNCs eventually result in final nonconfirmations. See USCIS, "E-Verify Statistics and Reports"; and Westat, *Findings of the E-Verify Program Evaluation*: 91-94 and 51-53.

51 Calculations based on 6 million US firms in FY 2007, and Westat's finding that one-quarter of firms reported direct costs of using E-Verify, including $100 to set up the system and $400 to maintain it; see US Census, "Statistics of US Businesses" FY 2007 and Westat, *Findings of the E-Verify Program Evaluation*: 183-184.

52 About 11.1 million Americans were victims of identity theft in 2009, according to the Javelin Research Group, which means that even under worst-case assumptions E-Verify accounts for a small proportion of identity-fraud cases presently; see Javelin Strategy and Research, "Javelin Study Finds Identity Fraud Reached New High in 2009, but Consumers are Fighting Back," (press release, February 10, 2010), www.javelinstrategy.com/news/831/92/Javelin-Study-Finds-Identity-Fraud-Reached-New-High-in-2009-but-Consumers-are-Fighting-Back/d,pressRoomDetail.

53 Calculations based on US Census, "Statistics of US Businesses," FY 2007 and USCIS, E-Verify List of Active Employers – Workforce 5. Data provided to author by USCIS.

54 Westat, *The Practices and Opinions of Employers Who Do Not Participate in E-Verify: Report Submitted to US Department of Homeland Security* (Rockville, MD: Westat Corporation, 2010): x, www.uscis.gov/USCIS/Resources/Reports/E-Verify/e-verify-non-user-dec-2010.pdf.

55 Westat created standardized measures of employer satisfaction and employer compliance with means of 500 and standard deviations of 100. Employers who were required to participate by a state or local government had satisfaction scores of 463 and employers who were required to participate by a client had satisfaction scores of 462, and employers in Arizona had an average compliance score of 474, compared to 510 for employers in other states. See Westat, *Findings of the E-Verify Program Evaluation*: 186 and 162-3.

56 See, for example, Stephen Raphael and Cynthia Bansak, "Immigration Reform and the Earnings of Latino Workers: Do Employer Sanctions Cause Discrimination," *Industrial & Labor Relations Review* 54, 2 (2001): 275-295.

57 A 2008 study by the Perryman Group estimated that to eliminate the entire unauthorized workforce of 8.1 million people would result in a short-term drop of $651 billion in US GDP, and a long-term loss of $245 billion in GDP and the permanent loss of 2.8 million jobs; see the Perryman Group, *An Essential*

Resource: An Analysis of the Economic Impact of Undocumented Workers on Business Activity in the US with Estimated Effects by State and by Industry (Waco, TX: The Perryman Group, 2008).

58 See, for example,, Charles E. Schumer and Lindsey O. Graham, "The Right Way to Mend Immigration," *The Washington Post*, March 19, 2010, www.washingtonpost.com/wp-dyn/content/article/2010/03/17/AR2010031703115.html.

59 The US Census Bureau recently attempted to fingerprint its canvassing staff and found that workers' prints were unreadable 22 percent of the time, and a second round of fingerprinting after additional training resulted in a projected fingerprint failure rate of 10 percent to 12 percent; Testimony of Robert Goldenkoff, Director, Strategic Issues, Government Accountability Office, "2010 Census: Key Enumeration Activities Are Moving Forward, But Information Technology Systems Remain a Concern" before the US Senate Homeland Security and Governmental Affairs Committee Subcommittee on Federal Financial Management, Government Information, Federal Services and International Security, 111th Cong. 1st sess., February 23, 2010: 12-13, www.gao.gov/new.items/d10430t.pdf. Also see Meissner and Rosenblum, *The Next Generation of E-Verify*.

60 A previous MPI report estimated the cost of enrollment for a nonbiometric card to be about $10 billion in agency costs plus $11.8 billion in lost wages; the costs of a biometric enrollment may be substantially higher; see Meissner and Rosenblum, *The Next Generation of E-Verify*.

61 For a longer discussion of these recommendations see Meissner and Rosenblum, *The Next Generation of E-Verify*.

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