

E-VERIFY AND EMPLOYER SANCTIONS LAWS: IMPACTS ON EMPLOYERS AND WORKERS



COALITION FOR HUMANE IMMIGRANT RIGHTS OF LOS ANGELES (CHIRLA)

EDITED BY: CYNTHIA BUIZA, CHIRLA DIRECTOR OF POLICY AND ADVOCACY
PREPARED BY: ELIZABETH VENABLE, CHIRLA POLICY ASSISTANT
JOSEPH VILLELA, CHIRLA STATE POLICY ADVOCATE
PUBLISHED: DECEMBER 2008



Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA)

2533 W. Third Street, Suite 101
Los Angeles, CA 90057

Telephone - 213.353.1333
Fax - 213.353.1344

E-VERIFY AND EMPLOYER SANCTIONS LAWS: IMPACTS ON EMPLOYERS AND WORKERS
Table of Contents

INTRODUCTION	2
Key Findings	2
E-VERIFY HISTORICAL BACKGROUND	3
HOW E-VERIFY WORKS	4
FUNCTIONAL PROBLEMS IN THE E-VERIFY SYSTEM AND PROBLEMS OF IMPLEMENTATION	4
E-Verify Error Rate and Data Input Errors	5
Disproportionate Effects of Data Errors on Naturalized Citizens	5
Increasing E-Verify Caseload	6
BURDEN ON BUSINESSES	6
E-Verify Not User Friendly	6
Maintenance of Workforce	7
Impacts on Small Businesses	7
Liability for Discrimination Lawsuits	8
BURDEN ON WORKERS	9
Discrimination	9
Lack of Accountability for Employers' Misuse of the Program	10
Problems with Correcting Status	11
COSTS OF THE E-VERIFY PROGRAM	12
Fiscal Impact of E-Verify Expansion	12
Impacts on the Social Security Administration	13
Costs to Governments in Lost Tax Revenue and Higher Contracting Fees	13
Micro- and Macroeconomic Changes	14
Indirect Social Cost	14
PROLIFERATION OF E-VERIFY IN LOCAL AND STATE GOVERNMENTS	15
QUESTIONABLE LEGALITY OF STATE EMPLOYER SANCTIONS LAWS BY LOCAL GOVERNMENTS	16
CONCLUSION	17
POLICY RECOMMENDATIONS	18
CHART 1: STATUS OF RECENT LAWS RELATING TO E-VERIFY AND EMPLOYER SANCTIONS AS OF JUNE, 2008	19
ENDNOTES	21

E-VERIFY AND EMPLOYER SANCTIONS LAWS: IMPACTS ON EMPLOYERS AND WORKERS

Coalition for Humane Immigrant Rights of Los Angeles December, 2008

EXECUTIVE SUMMARY

Use of E-Verify, a federal online system that employers can use to verify employees' immigration status, has expanded dramatically since 2004. The primary impulse behind the adoption of E-Verify has been both state and federal government mandates that government contractors, and, in some cases, all businesses, enroll in the program. E-Verify mandates are often coupled with employer sanctions laws, which penalize employers for hiring and retaining undocumented workers. Despite the current 'popularity' of E-Verify mandates, this program may have a number of negative effects on business owners, authorized and native workers, as well as undocumented workers. This report explores those potential negative effects, as well as developments that have occurred on the state level with regards to E-Verify.

KEY FINDINGS

Among the key findings of this report are the following:

- E-Verify has an unacceptably high rate of errors, and those errors disproportionately impact work-eligible immigrants, legal permanent residents (LPRs), and naturalized citizens. These errors are attributable to mistakes in federal records.
- E-Verify, while theoretically free to businesses, requires both infrastructure and an investment of employee expertise. Some small businesses may not have the resources to implement E-Verify.
- Misuse of E-Verify can be damaging to employers, who may be subject to discrimination complaints and lawsuits. Use of E-Verify, and the rules of E-Verify, may not be taken lightly, as the misuse of the program results in improper and potentially discriminatory firing of work-eligible employees.
- Substantial evidence of employer misuse of the program has been documented. Unauthorized practices include the pre-screening of job applicants, the inappropriate penalization of nonconfirmed employees (employees whose information does not match the SSA database), and retaliation against workers. Although employers are theoretically accountable to Immigration and Customs Enforcement (ICE) for misuse of the system, genuine enforcement of the prohibitions embedded in E-Verify appears to be scant.
- Workers who are mistakenly classified as nonconfirmed bear the burden of proof. They may face an arduous, uncompensated, and time-consuming experience as they endeavor to correct their erroneous nonconfirmed status.
- There are few systems of accountability for rectifying discriminatory misuse of E-Verify, and the few means there are may be difficult to maneuver. Workers who have been discriminated against may have a difficult time having their complaints rectified.

- The expense of E-Verify in terms of both direct provision of the service and lost tax revenue, may be higher than the benefit to both state governments and to the federal government. In addition, employer sanctions laws and E-Verify mandates may be detrimental to local economies.
- Whereas the federal government is generally regarded as being responsible for enforcing immigration laws, state, county, and city governments are increasingly promoting paradigms wherein they enforce immigration laws. These entities are creating new penalties for the undocumented, as well as penalties such as employer sanctions for businesses that hire undocumented workers. Elements of this patchwork of laws may be unconstitutional.
- Laws that mandate use of E-Verify simply strengthen an enforcement-only approach to our current broken immigration system and do not address the causes of undocumented immigration. These laws have unintended negative consequences for employers, workers, and their families—be they undocumented, work-eligible, or citizens.
- Small businesses face the highest burden when they decide to use the E-verify system, and immigrant owned businesses are disproportionately affected by it.

POLICY RECOMMENDATIONS

- A just and humane immigration reform must be enacted to truly address our broken immigration system.
- Expansion of E-Verify should be reconsidered until the multitude of problems in its database is corrected, and until it can be guaranteed that eligible workers, legal permanent residents, and naturalized citizens will not be negatively affected.
- There is sufficient cause to believe that state employer sanctions mandate by states and local governments may be deemed unconstitutional, as they directly conflict with the stipulations of IRCA. States should be wary of imposing new employer sanctions laws until they have been fully tested by the courts.
- Noting the potential for numerous violations of workers' rights that may be triggered by use of E-Verify and de-facto encouraged by employer sanctions laws, states should enhance their anti-discrimination efforts. While it may not be constitutional to bar businesses from using E-Verify, it is constitutional to protect the rights of workers.
- Towards the goal of promoting workers rights and higher wages for citizens as well as for immigrants, states would likely be better served by strengthening labor protections and labor enforcement, as opposed to enforcing immigration law.

INTRODUCTION

Use of E-Verify, a federal online system that employers can use to verify employees' immigration status, has expanded dramatically since 2004. The primary impulse behind the adoption of E-Verify has been both state and federal government mandates that government contractors, and, in some cases, all businesses, enroll in the program. E-Verify mandates are often coupled with employer sanctions laws, which penalize employers for hiring and retaining undocumented workers.

E-Verify is part of bigger effort to amplify and adopt punitive measures to deal with the current population of unauthorized immigrants. In recent years the federal government has stepped up its effort to crack down on undocumented workers. In the majority of cases these efforts have been driven by an anti-immigrant sentiment as well as by policy-makers who perceive political opportunity in anti-immigrant policy. Anti-immigrant groups have perceived a level of impunity in the business community with regards to the employment of undocumented immigrants, and have lobbied for programs that address the issues from an enforcement perspective. Yet, sound policies to solve our immigration status have been absent—including a just and humane immigration reform.

Despite the current 'popularity' of E-Verify mandates, this program may have a number of negative effects on business owners, authorized and native workers, as well as undocumented workers. This report explores those potential negative effects, as well as developments that have occurred on the state level with regards to E-Verify.

KEY FINDINGS

Among the key findings of this report are the following:

- E-Verify has an unacceptably high rate of errors, and those errors disproportionately impact work-eligible immigrants, legal permanent residents (LPRs), and naturalized citizens. These errors are attributable to mistakes in federal records.
- E-Verify, while theoretically free to businesses, requires both infrastructure and an investment of employee expertise. Some small businesses may not have the resources to implement E-Verify.
- Misuse of E-Verify can be damaging to employers, who may be subject to discrimination complaints and lawsuits. Use of E-Verify, and the rules of E-Verify, may not be taken lightly, as the misuse of the program results in improper and potentially discriminatory firing of work-eligible employees.
- Substantial evidence of employer misuse of the program has been documented. Unauthorized practices include the pre-screening of job applicants, the inappropriate penalization of nonconfirmed employees (employees whose information does not match the SSA database), and retaliation against workers. Although employers are theoretically accountable to Immigration and Customs Enforcement (ICE) for misuse of the system, genuine enforcement of the prohibitions embedded in E-Verify appears to be scant.

- Workers who are mistakenly classified as nonconfirmed bear the burden of proof. They may face an arduous, uncompensated, and time-consuming experience as they endeavor to correct their erroneous nonconfirmed status.
- There are few systems of accountability for rectifying discriminatory misuse of E-Verify, and the few means there are may be difficult to maneuver. Workers who have been discriminated against may have a difficult time having their complaints rectified.
- The expense of E-Verify in terms of both direct provision of the service and lost tax revenue, may be higher than the benefit to both state governments and to the federal government. In addition, employer sanctions laws and E-Verify mandates may be detrimental to local economies.
- Whereas the federal government is generally regarded as being responsible for enforcing immigration laws, state, county, and city governments are increasingly promoting paradigms wherein they enforce immigration laws. These entities are creating new penalties for the undocumented, as well as penalties such as employer sanctions for businesses that hire undocumented workers. Elements of this patchwork of laws may be unconstitutional.
- Laws that mandate use of E-Verify simply strengthen an enforcement-only approach to our current broken immigration system and do not address the causes of undocumented immigration. These laws have unintended negative consequences for employers, workers, and their families—be they undocumented, work-eligible, or citizens.
- Small businesses face the highest burden when they decide to use the E-verify system, and immigrant owned businesses are disproportionately affected by it.

E-VERIFY HISTORICAL BACKGROUND

E-Verify is a web-based federal program aimed at reducing employment of undocumented immigrants by providing employers with the option of electronically verifying employment eligibility of new employees. The concept behind E-Verify dates back to the Immigration Control and Reform Act of 1986 (IRCA), which required employers to verify employees' work status by means of The Employment Eligibility Verification Form I-9. IRCA effectively shifted partial responsibility for the control of unauthorized immigration to employers, and assigned penalties to employers who hired undocumented immigrants. In 1990, the U.S. Commission on Immigration Reform (also known as the Jordan Commission) was developed to make recommendations on immigration, and among its recommendations were the endorsement of the development of an electronic registry to verify work status.¹ The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) paved the way for an electronic program to verify worker legality as a compliment to the I-9 form system.² E-Verify, earlier named the Web Basic Pilot Program, was first made available to employers in June 2004.³

As of the end of FY 2008, there were approximately 88,000 businesses nationwide enrolled in the E-Verify program.⁴ Approximately one third, or 25,000 as of April 2008, of those

employers are located in Arizona, where the state has mandated that all businesses use E-Verify.⁵ In June 2008, President Bush signed an executive order mandating that all federal government contractors must use the E-Verify system.⁶ Federal agencies were already required to use E-Verify in their hiring practices.

HOW E-VERIFY WORKS

To use E-Verify, employers first register for the program, and sign a Memorandum of Understanding with U.S. Citizenship and Immigration Services (USCIS) and the Social Security Administration (SSA). Employers then enter in information about newly hired employees, including their “Social Security number, name, date of birth, citizenship or alien status, and, if relevant, Alien number.”⁷ The information goes first to the SSA database, for citizens, and then to the USCIS database, for immigration records. If the records are in the SSA database, the agency issues a confirmation that the employee is “work-authorized.” However, if the information does not match the SSA database, the agency issues a “tentative nonconfirmation finding.”⁸

Persons who claim to be noncitizens are sent through the SSA database and then through the USCIS database, which can also issue confirmation that the individual is work-authorized. If the employee is not confirmed, the information is manually checked by an Immigration Status Verifier, who can then confirm or tentatively nonconfirm that the person is authorized to work.

Employers who receive tentative nonconfirmation notices for their new employees are required to notify the employee in writing. It is then the responsibility of the employee to correct their records with the SSA within eight Federal working days.⁹ If the employee chooses not to contest the tentative nonconfirmation, the system issues a final nonconfirmation finding, and the business is expected to end the employment and notify the system, after ten working days following the original request.

A developing feature of the program is the use of photographs to “detect identity fraud.”¹⁰ Employers have the choice to compare pictures in the government’s database to the appearance of the potential employee. It has been noted, however, that despite this feature, the E-Verify system is very vulnerable to identity theft. Some critics, such as Jim Harper from the Cato Institute, have argued that whereas the I-9 form system simply encouraged the production of false documents, the E-Verify system encourages direct identity theft, because only information that can be confirmed by the database is accepted and results in a confirmation of identity.¹¹

FUNCTIONAL PROBLEMS IN THE E-VERIFY SYSTEM AND PROBLEMS OF IMPLEMENTATION

There are a variety of problems with the E-Verify system itself—most notably a high error rate. Beyond that, there are difficulties in expanding the SSA and USCIS databases and correcting the wrongly nonconfirmed status of citizens, legal permanent residents (LPRs) or work-authorized immigrants. Among these are the high caseloads of SSA staff—a factor that will become increasingly important if E-Verify is more commonly used, whether voluntarily or as a mandate.

E-Verify Error Rate and Data Input Errors

The effectiveness of the E-Verify database is limited by a number of factors, including data errors. The Westat report (which was commissioned by USCIS) provides comprehensive data about verification attempts from June 2004 to March 2007. According to the report,

“During this time, employers made almost 3.5 million verification attempts, 84 percent of which were for workers verified by SSA as being work-authorized. Another 9 percent of the cases were verified by USCIS as being individuals authorized to work. Seven percent of all verification attempts were never resolved (labeled “Final nonconfirmation by SSA” or “Final nonconfirmation by USCIS”)... In addition, about 0.2 percent (7,636 cases) were found by USCIS to be unauthorized to work in the United States.”¹²

Some of the non-confirmations are due to the high rate of data errors within the database itself. The rate is affected by simple errors in the SSA database, which can result from a marriage, divorce, name change, or other similar error, or change in immigration status that is not reported to the SSA.

The database is updated when individuals provide their information to the SSA. However, many of these individuals may have no knowledge of mistakes in their files. The USCIS database also has similar errors. For example, the United States Government Accountability Office notes that Department of Homeland Security (DHS) has delayed the “entry of information on immigrants’ and nonimmigrants’ arrivals and employment authorization into [their] databases.”¹³

The process of verification is also impacted by data input errors on the side of the employer (such as spelling or use of a middle initial instead of a middle name). Errors may also be based upon “cultural differences in how surnames are used.”¹⁴ Employers who enter in erroneous data may generate a false nonconfirmation, in which otherwise work-legal employees are reported as being potentially ineligible for employment.

Disproportionate Effects of Data Errors on Naturalized Citizens

Naturalized citizens are much more likely than average to be erroneously nonconfirmed. The Westat report described the issue succinctly, stating, “the database used for verification is still not sufficiently up to date to meet the IIRIRA requirement for accurate verification, especially for naturalized citizens.”¹⁵ Because many E-Verify confirmations are based on the SSA database, the error rate of that database becomes increasingly relevant. In December 2006, the Office of the Inspector General of the Social Security Administration prepared a report on errors in the database for the Subcommittee on Social Security, in the House Committee on Ways and Means. This report found that the error rate in the database as a whole was 4.1%.¹⁶ The error rate for naturalized citizens was approximately 10%. The Westat report argued that because naturalized citizens, LPRs, and work-eligible immigrants are more likely to be erroneously non-confirmed, a likely result of the bias in data errors might be “increased discrimination against foreign-born employees.”¹⁷

According to the *Los Angeles Times*, “between October 2006 and March 2007, about 3,200 foreign-born U.S. citizens were initially improperly disqualified from working by E-Verify.”¹⁸ If the errors in the SSA and DHS databases are not corrected quickly enough, the

effects on naturalized citizens are likely to be magnified as more employers choose (or are forced) to use the system.

In May 2008, USCIS announced changes to the E-Verify system that are aimed at remedying the problem of erroneous nonconfirmations for naturalized citizens. According to USCIS, the system will begin to incorporate naturalization data. However, the success of this program in reducing the error rate cannot yet be measured at present, because the program is so new.¹⁹ In addition, the program will face the challenge of incorporating the recently high number of naturalization applications, which surged up to 1.4 million in 2007.²⁰

Increasing E-Verify Caseload

As more and more employers are required to utilize E-Verify, the caseload for the SSA and USCIS has increased dramatically. According to the Kane County Chronicle, “since October [2007], the beginning of the federal fiscal year, however, about 3.17 million inquiries had been made, putting E-Verify on pace to field 5.43 million inquiries this year, an increase of about 60 percent.”²¹ With recent announcements of requirements for federal contractors to use E-Verify, as well as an increasing number of state requirements that state contractors and other businesses must use E-Verify, it is logical to expect the number of queries to increase substantially in the coming years. While many queries result in immediate confirmation, many others do not. The process of confirmation can then become far more labor intensive, as SSA employees check back data and as more and more potential employees visit SSA offices to correct erroneous nonconfirmations. Barring the hiring of high numbers of additional staff, the pace of confirmation and addressing other issues may decrease significantly.

BURDEN ON BUSINESSES

Employers face a number of issues if they choose to use E-Verify. In states where E-Verify is required, employers who might otherwise not participate in the system, either because of difficulty of use, problems with the database, or liability issues, are forced to do so lest they face state penalties. These difficulties may be amplified for small businesses, which have fewer resources to devote to compliance.

E-Verify Not User Friendly

Employers have expressed a variety of complaints about their experiences in using the E-Verify system. For example, the WESTAT report found that some employers experienced “unavailability of the system during certain times, problems accessing the system, or training new staff to do verifications using the system.”²² One business owner, Laura Kendall, of Intricate Builders LLC in Phoenix, Arizona, recalled spending nearly seven hours over two days trying to get just one employee verified.²³

State mandates of E-Verify for all businesses (e.g. Arizona, Mississippi) have prompted the development of a niche industry devoted specifically to compliance. Although the E-Verify system is free to use, some businesses have found that they need assistance in operating the program and running queries. Firms that have been established to help businesses mitigate the difficulty of using E-Verify include Imperative Information Group in Fort Worth, Texas, run by Mike Coffey. Coffey suggested that employers are turning to his services because “the E-Verify

system is not easy to use.”²⁴ Another provider of E-Verify services is Judd Slivka of Olympia Conceptual, who (colorfully) explained the demand for his services, stating, “every company with more than 50 employees has an HR (human relations) person who would rather slam her fingers in a drawer over and over and over than do E-Verify...It's about time management.”²⁵ Firms such as these routinely charge between \$7.50 and \$10.00 per query. The costs, says Julie Pace, an immigration lawyer from Phoenix, may simply be transferred on to customers.²⁶

Maintenance of Workforce

Employers in many industries may have difficulty in recruiting enough work-eligible employees. Some industries, such as agriculture, construction, service industries, and meatpacking, have particularly high rates of both documented and undocumented immigrant workers. While, elements of these industries, aside from low wages, make them less appealing as employment opportunities for LPRs, eligible workers, and citizens, the bigger problem that U.S. is facing a shortage of workforce both skill and unskilled workers. Anecdotal and media accounts suggest that some of these fields, especially agriculture, are already facing severe labor shortages. Businesses may have genuine concerns that, even when wages are improved, they may not be able to find sufficient numbers of authorized workers to meet the needs of their industries.

In addition, employers may run into other difficulties in terms of maintaining their workforce and allocating training because they are not allowed to fire employees that are in the process of contesting their E-Verify results, or because they are forced to fire otherwise qualified, trained employees who cannot prove their status. According to the Westat report, as a result of these conditions, “some employers believe that they lose their training investment as a result of electronic employment verification through the [E-verify] process.”²⁷

Impacts on Small Businesses

Problems with understanding, implementing, and complying with the system may be amplified for small businesses, who may have small numbers of human resources personnel, and may not have the same resources to devote to E-Verify compliance.²⁸ Even businesses with human resources personnel must educate and train staff to maintain compliance standards, and to avoid utilizing the system in a discriminatory manner. According to a report issued by the National Association of Homebuilders, the National Roofing Contractors Association, and the U.S. Chamber of Commerce, “small employers who do not have human resources departments and who only occasionally bring on new workers may be more vulnerable to error and may therefore be at higher risk of violating the law.”²⁹ Smaller companies may simply not have the resources to navigate the process, and it may place unnecessary strain upon them.

In addition, according to Jim Harper of the Cato Institute, some businesses may not have access to the internet “because of remoteness, cost, or lack of business necessity.”³⁰ Businesses without access to consistent internet, or which do not have up-to-date hardware and software, cannot implement the E-Verify system. If E-Verify were mandated for all businesses in the nation, many firms might be required to purchase costly new equipment or upgrades.³¹

In recent years, the rapid growth of small and family owned businesses has been attributed in large part to the work of immigrant entrepreneurs. Immigrants are starting new businesses at a greater rate than native-born residents, becoming essential to many local

economies, and are stimulating growth in sectors ranging from food manufacturing to health care. A significant number of small business owned by immigrants face unique challenges, including lack of understanding new regulations due to inadequate cultural and linguistic outreach and incorporation. Interestingly, the E-Verify manual appears to only be offered in English—at least on the USCIS website. While posters informing employees of the presence of E-Verify in the workplace are available in both Spanish and English, they do not appear to be available in other languages, and employers are not required to post them in other languages. The MOU also appears to be available only in English. Legal compliance with any program likely requires full comprehension of the documents at hand. Business owners whose first language is not English may be more likely to misuse or misunderstand the guidelines of E-Verify, and may be more vulnerable to sanction.

Liability for Discrimination Lawsuits

E-Verify is a relatively new system, at least in terms of implementation, and the legality of its implementation is still being determined. Furthermore, even though companies are expected to be in compliance with federal immigration laws, they are also required to treat workers legally under both federal and state labor laws.

Tim Hartigan, a federal subcontractor from St. Paul, Minnesota, commented on the bind that employers face when balancing the concerns of making sure their workforce is work-verified and avoiding participation in discriminatory practices. He stated, "I think most employers really want to be in compliance with the law...But if we're going to end up firing people because of inaccuracies in the data, that's a problem." Further, he said, "If you dismiss someone who is here legally, you're liable for 'wrongful termination' [of an employee]. It's a sticky question."³²

The relevance of this potential contradiction was underlined by a June 16, 2008 decision by the Ninth Circuit Court of Appeals regarding the firing of janitors by Aramark Facility Services (Aramark). The lawsuit stemmed from application of the federal No-Match letter program, and not the E-Verify system. However, some of the mechanics of the systems are similar—for example, both utilize the SSA database to identify miss-matched or non-confirmed employees. However, the ruling did not address the legality of the programs, but rather the legality of the employer's response to the program—and as such it may set a relevant precedent for E-Verify in the future.

According to the lawsuit, in 2003 Aramark received letters from the federal government, which notified them that 48 of their employees' social security numbers did not match numbers in the database. Aramark gave the employees three days to resolve the issue, and fifteen were able to. However, the remaining 33 employees were fired because of their no-match status. The Service Employees International Union (SEIU) local 1877 in San Francisco filed suit on behalf of the employees, claiming that they had been fired without just cause—a breach of their union contract. An arbitrator initially decided in favor of SEIU and the workers, reinstated them, and awarded them back pay. However, a district court nullified the award. However, the appellate court decided in favor of the workers, and reinstated the original judgment.

The most relevant aspect of the case is that, to fire the employees legally because of their status, Aramark would have to have "established constructive knowledge of any immigration violations"—and would have to have "positive information of a worker's undocumented status." The appellate court found that the employees' "failure to meet the deadline simply is not

probative enough of their immigration status” to justify termination. More explicitly, the appellate court found that Aramark would be in violation of the Immigration Reform and Control Act of 1986 if it “knowingly” employed undocumented labor, and that the no-match letters and the inability of workers to resolve their status within such a short period of time did not meet the standard of proving that workers were undocumented.³³

While the legal ramifications of this decision in the long-term are likely still in flux, it may be prudent to note that employers who make incorrect or discriminatory decisions about their means of implementing E-Verify within their own workplaces may be subject to lawsuits. David Rosenfeld, the lawyer who represented the Aramark workers, suggested that the issues with E-Verify and the no-match letters were almost identical: “The E-Verify system has the same problems as the no-match letters... The 9th Circuit agreed the no-match letters were inadequate.”³⁴ The E-Verify process, as it currently operates, may not necessarily protect businesses from liability, but rather it may make them further vulnerable.

BURDEN ON WORKERS

Workers of all backgrounds may be impacted in a variety of ways by increasing use of E-Verify. Workers’ concerns may include racial profiling and discrimination, intentional or unintentional misuse of the system, and problems with correcting erroneously nonconfirmed status.

Discrimination

Employers are specifically notified in the E-Verify Memorandum of Understanding (MOU) that they must comply with section 247B of the Immigration and Nationality Act (INA)—that is, they may not discriminate against employees or potential employees. In addition, employers are “prohibited from initiating verification procedures before the employee has been hired and the Form I-9 completed,” must not “verify selectively,” is responsible for “notifying employees of the finding, providing written instructions to employees, allowing employees to contest the finding, and not taking adverse action against employees if they choose to contest the finding,” and may not “take any adverse action against an employee based upon the employee’s employment eligibility status while SSA or the Department of Homeland Security is processing the verification request.”³⁵

However, there are many opportunities for intentional or unintentional misuse of the E-Verify system. Actual practices engaged in by businesses and agencies may stray widely from the standards of the E-Verify MOU. In addition, the high error rate for naturalized citizens, LPRs and work-eligible immigrants likely contributes to discriminatory applications of the system. Jim Harper of the Cato Institute suggests that use of the E-Verify system strengthens incentives for employers to engage in discriminatory practices: “Recognizing that Hispanic employees—even native-born citizens—are more often caught up in identity fraud and tentative nonconfirmation hassles, employers would select against Hispanics in their hiring decisions.”³⁶

Mitchell Laird, owner of a number of Phoenix-based Burger King restaurants, further noted that strong sanctions for employers who hire undocumented workers may increase pressure for them to give hiring ‘preference to applicants who look like they.... are U.S. citizens.’³⁷ Ramon Leon, the executive director of the Minneapolis-based Latino Economic Development Center, suggested that sanction pressures, coupled with high rates of erroneous nonconfirmations

for Latinos, may lead to discrimination against that ethnic group. He cautions employers to “be very careful if they use” E-Verify, lest they engage in discriminatory practices.³⁸

Westat researchers found considerable evidence of the following unlawful practices among active users of E-Verify:

-Using the program to pre-screen job applicants. According to Westat, “This activity is prohibited by statute, at least in part due to a concern that employers would fail to hire employees receiving erroneous tentative nonconfirmations, thereby discriminating against foreign-born employees.”³⁹

-Not notifying employees or applicants of tentative nonconfirmations, or not providing full information about the process, “thereby making it difficult or impossible for employees to contest the finding and denying them their rights.”⁴⁰

-Penalizing employees for tentative nonconfirmation. “These actions included restricting work assignments, delaying training, reducing pay, or requiring them to work longer hours or in poor conditions. In the case of employers screening job applicants, delays in hiring may occur.”⁴¹

-Discouraging “employees with tentative nonconfirmations from contesting, which may result in work-authorized employees unfairly losing their jobs.”⁴²

These and other misuses or misapplications of the E-Verify system may strengthen a climate of intentional or unintentional discrimination against people who appear to be unauthorized or people who are members of ethnic groups that have high proportions of immigrants among their ranks. In addition, some of these practices (e.g., pre-screening, failing to notify applicants of nonconfirmations) may not be readily apparent to even the most observant job applicant—thus lowering the likelihood that they may be challenged.

Lack of Accountability for Employers’ Misuse of the Program

It is notable that there seem to be few incentives for employers who use E-Verify to refrain from discrimination. The Memorandum of Understanding (MOU) that businesses must sign to use the E-Verify database warns them that, if they misuse E-Verify, they may be subject to unspecified “appropriate legal action and termination of its access to SSA and Department of Homeland Security information,” as well as penalties for defying the INA.⁴³ Adverse consequences for employers who violate the terms are described only vaguely in both the MOU and the E-Verify manual. These penalties vary according to the offense, but largely include civil penalties in graduated amounts (corresponding to different offenses) of between \$250 and \$10,000 dollars per worker discriminated against.⁴⁴

However, according to Julie A. Pace, David A. Selden and Heidi Nunn-Gilman, “there currently has not been monitoring by USCIS of compliance by employers and designated agents with E-Verify. It appears that there generally is no financial penalty for violations of the MOU.⁴⁵ There appears to be no formal accountability process administered by DHS. Unless a suit or complaint were brought on behalf of workers, it seems unlikely that punishment would be meted out. It appears that the onus of reporting discrimination falls upon the employees, and that

detection mechanisms may not be embedded into E-Verify itself—although DHS may be collecting data regarding to employer use of E-Verify for, e.g. enforcement purposes.

Employees who have been discriminated against are advised to file a complaint with the Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC).⁴⁶ The OSC can help workers obtain “back pay and reinstatement, among other remedies.”⁴⁷ Employees must file their complaints within 180 days of the discrimination.

In 2006, a naturalized citizen named Fernando Tinoco obtained employment as a meatpacker with Chicago-based Tyson Foods, Inc. Two hours after he began his first day at work, he was taken by security guards to the office and told he was fired, because he had been classified by E-Verify as tentatively nonconfirmed. Mr. Tinoco went to an SSA office and got documentation confirming his citizenship. However, when Mr. Tinoco returned to the company to show them his paperwork, he said, “the security guard chased me away, told me not to come back to the company because I was fired,” according to an article in the *Christian Science Monitor*. These alleged actions by Tyson Foods’ management—that is, immediately firing him instead of granting him time to correct his status—seem to have clearly violated the terms of the E-Verify MOU. Mr. Tinoco was eventually offered his position again, after a news reporter asked Tyson Foods about the issue. However, had the case not been well publicized, it seems unlikely that the case would have had any positive resolution. Indeed, it seems more likely that employees of businesses all over the nation may be facing the same sort of discrimination that Mr. Tinoco experienced.⁴⁸

Problems with Correcting Status

Workers who are notified of their nonconfirmation status and who are able to contest it face a number of hurdles. These issues likely contribute to the relatively low rate (one percent) of workers who contest their non-confirmation status.⁴⁹ In addition, difficulties in the process likely contribute to the relatively low rate of success—only half of that one percent are able to resolve the issue.⁵⁰

While for some individuals the problem of correcting one’s status with the SSA may be simply an inconvenience, others may encounter more significant hassles. The experience of Juan Carlos Ochoa is illustrative of some of the problems that may arise. Ochoa, who is a naturalized citizen, was informed by his new employer that he could not be verified. Because he had lost his naturalization certificate, he brought his passport, Social Security card, and Arizona driver’s license and voter registration card to the SSA office. Those documents were not considered enough evidence, and Ochoa was told that he would have to wait for up to 10 months while DHS issued new papers for him. In the meantime, Ochoa would still be listed as non-confirmed in the E-Verify database.⁵¹ Furthermore, eligible immigrant workers who are employed in low-wage industries may have difficulties contesting a “non-confirmation” as they most likely speak languages other than English, and may not understand that they are being screened through E-Verify and may not be offered documentation in their own language.⁵²

Other problems arise for citizens who do not live near an SSA office—they may have to travel quite a long distance simply to resolve their status. In addition, SSA offices may only be open during inconvenient hours. For example, in Arizona, there are only 16 SSA offices, and they are only open between 9 a.m. and 4 p.m., Monday through Friday. Further, in Arizona there is only a single USCIS office, and it only allows people to come in if they have made an online

appointment—a complicating restriction for those with no internet access or who face a lack of familiarity with the process.⁵³

Even those with copious amounts of experience navigating the process may indeed run into difficulty. One striking example is that of Traci Hong, a naturalized citizen, who had to make multiple visits to SSA and her employer’s personnel office to get her mistaken nonconfirmation cleared up. It took Hong, an immigration lawyer, who works for a member of the U.S. House of Representatives, no less, over a week to clear her own status.⁵⁴ If the system is so challenging and inefficient for experts to navigate, one can only imagine the frustrations of working class people.

Finally, even those who are able to provide appropriate documentation to their employers may face discrimination after they go through the hurdles of the E-Verify process. Bruce Nestor, a Minneapolis immigration attorney discussed this problem, stating, “I had a client dismissed from a laundry a couple months ago who had a valid Social Security card.” Nestor further noted “even a printout from the Social Security Administration office confirming his identity matched didn’t resolve the situation.”⁵⁵ Workers who receive a non-confirmation result, regardless of their actual status, may be automatically assumed to be undocumented. Indeed, advocates from DHS and the SSA routinely justify low correction and contestation rates by suggesting that those workers who either chose not to contest or are not able to successfully contest their results *must* be “illegal.” The barriers to the process of proving legality—the difficulty in correcting one’s status, coupled with the high error rate—suggest that this is not always the case.

COSTS OF THE E-VERIFY PROGRAM

The current and future costs of the E-Verify program can be assessed in a number of ways, ranging from direct costs to the SSA and USCIS, to impacts upon other clients of the SSA, to effects on business owners, workers, and general economic conditions.

Fiscal Impact of E-Verify Expansion

For Fiscal Year (FY) 2009, Department of Homeland Security Secretary Michael Chertoff officially requested \$100 million dollars for the E-Verify program.⁵⁶ It is unknown as to whether these figures will need to be adjusted upward for FY 2009, to accommodate the recent presidential executive order requiring all federal government contractors to use E-Verify.

In an April 2008, letter from the Congressional Budget Office to the House of Representative’s Committee on the Judiciary, the Office evaluated costs of expanding the E-Verify system nationwide under the S.A.V.E. Act. This initiative attempted to mandate E-verify across the nation, among other punitive measures to control undocumented immigration. Costs listed reflect figures for the 2009-2018 period. According to the Office, the mandate of the S.A.V.E. Act as a whole would increase costs in a number of ways, ranging from an increase in federal judges’ salary costs (\$30 million), to costs borne by the Department of Homeland Security (DHS), the Social Security Administration (SSA), and local governments for implementation and enforcement (\$23.4 billion). E-Verify is only a portion of the S.A.V.E. Act; its costs are integrated into these numbers. However, the office does provide a breakdown of potential costs to be borne by various agencies. The most relevant categories of costs include “Employment Verification System” and “SSN Verification,” for which the 2009-2018 estimated authorization costs are \$3.16 billion and \$9.05 billion, respectively.⁵⁷

Other entities also provide estimations of costs for the proposed nationwide expansion of the E-Verify system. For example, a June 2007 Government Accountability Office (GAO) report solely addressed the electronic verification process. The report listed estimated DHS costs for an expanded system as being “\$70 million annually for program management and \$300 million to \$400 million annually for compliance activities and staff.” The SSA would also bear costs; however the report does not estimate future expenditures for this agency.⁵⁸ May 2008 Congressional Testimony by the Government Accountability Office cites the potential costs of mandatory implementation of E-Verify as being “about \$765 million for fiscal years 2009 through 2012 if only newly hired employees are queried through the program and about \$838 million over the same 4-year period if both newly hired and current employees are queried.”⁵⁹ The SSA offers different, but also strikingly high figures on the costs of mandatory use of E-Verify, estimating that “implementation of a mandatory E-Verify program would cost a total of about \$281 million and require hiring 700 new employees for a total of 2,325 additional workyears for fiscal years 2009 through 2013.”⁶⁰ Regardless of whether conservative or higher figures are more accurate, it can be stated that a substantial investment in personnel, infrastructure, and funds would be required to expand the database to meet the needs of all employers in the country.

Impacts on the Social Security Administration

The Social Security Administration already appears to be operating beyond its capacity—as viewed by its ability to respond to other tasks already under its jurisdiction. For example, the SSA, as of 2008, has a backlog of approximately 500,000 pending disability claims, as well as approximately 750,000 appeals to rejected claims, still waiting to be processed. As of February 2008, the average wait on a disability appeal was “more than 150 days.”⁶¹ E-Verify queries and disputes may further disrupt the SSA’s ability to respond to these and other issues.

Costs to Governments in Lost Tax Revenue and Higher Contracting Fees

The Congressional Budget Office stated that a nationwide expansion of E-Verify would have the likely consequence of decreasing federal revenues by “\$17.3 billion over the 2009-2018 period.” This reduction would come from the fact that employers would no longer be withholding income and employment taxes from undocumented immigrants, but would rather either choose not to employ these individuals or would transition them to a different pay system in which their pay is not reported to the federal government. Currently, employers report the wages of undocumented immigrants by use of Individual Tax Identification Numbers.⁶²

Similar phenomena may be happening in states that have mandated E-Verify and/or mandated employer sanctions—more workers may be driven underground or may leave the state, resulting in significant reductions in state tax revenue. This is ironic, because policies that are (at least rhetorically) aimed at reducing strain on state coffers may actually be increasing that same strain.

Furthermore, the mandate of E-verify by local and state governments, also affects local and state economies. Policies that mandate E-Verify for state contractors may have unintended effects on both contractors and on local governments themselves. Mike Bruner of the Associated Builders and Contractors of Florida has written that, when or if E-Verify is required for state contractors, “some contractors may decide not to bid on government projects, rather than take the

risk that one of the subcontractors is not in full compliance.”⁶³ Governments may also be forced to pay higher rates for the contractors they do retain—either because of the simple lack of competition for contracts or because of the cost associated with implementation of E-verify system.

For instance, a Colorado business owner, Dylan Norton, decided to cancel his business with the state after it required all contractors to use E-Verify. Norton, who owns a “breakfast-and-lunch shop,” said that he “wouldn’t be able to fill his four \$12-an-hour kitchen jobs if workers had to clear E-Verify.”⁶⁴ In addition, a road contractor from Colorado named Mark Gould was able to retain 90% of the staff he needed, after raising wages by two dollars. He then “passed the higher cost on to local governments.”⁶⁵ The effects of Colorado’s law—which was one of the earliest to be passed, and thus has offered some observable results—should be taken into account by states and local governments who have not already required E-Verify. The federal program, which has been touted as free and easy, may create problems for local governments that fit neither of those descriptors.

Micro- and Macroeconomic Changes

The National Association of Homebuilders, National Roofing Contractors Association, and U.S. Chamber of Commerce’s report on impacts of state mandates that businesses use or are barred from using E-Verify examines potential economic costs associated with the program. The author, Peter Creticos, notes that because these programs are relatively new, “it is impossible to measure their results” as of yet.⁶⁶ However, Creticos describes potential impacts of mandatory E-Verify compliance. These include “increases in the time and expense of hiring and qualifying new workers, and in the availability of authorized workers,” “an increase in voluntary separations,” “an increase in involuntary separations,” “a short term increase in average hourly wages,” “changes in output and prices for industries employing a high proportion of immigrants,” including construction and manufacturing,” “changes in the mix of agricultural products and outputs,” “changes in inputs for industries... including construction subcontracting, transportation, [and] wholesale distribution,” and a possible “downward push in the value of goods and services purchased by immigrants vis-à-vis other state residents.”⁶⁷ The long-term effects of E-Verify as a policy will likely be further understood in the future—in the present, mandatory implementation in states such as Arizona and Mississippi is new, and it is difficult to directly ascribe values to phenomena in process without longer study. However, it does seem likely that economies of these states, and potentially of the nation as a whole, may be significantly impacted by growing E-Verify usage requirements.

Indirect Social Cost

In the absence of a humane and just immigration reform, and in light of the increased use of punitive enforcement measures against businesses including worksite raids, a significant number of unauthorized immigrants are forced to work in informal industries and below the radar of authorities. As the penalties for hiring undocumented workers increase, there is increased potential for the channeling of workers into an “underground” economy. It may be relatively easy for certain types of employers who wish to knowingly employ undocumented workers to do so by simply classifying them as contractors and not as employees. In such an economy, as when employees are transitioned into contracting work—which often does not

require immigration status checks—workers lose many of their rights under labor law. The effect of strengthening such an underground economy might very well be the further lowering of labor standards for all workers. This trend would give the unscrupulous employers the opportunity to take advantage of workers, also giving them an upper hand over law-abiding employers in terms of business costs.

PROLIFERATION OF E-VERIFY IN LOCAL AND STATE GOVERNMENTS

According to the National Conference of State Legislatures, in 2008 more than 1100 immigration related bills were introduced at the state level—triple that of 2006. Unfortunately, the most popular bills relate to enforcement of immigration laws by states.⁶⁸ These numbers do not include efforts by local governments (e.g., counties, cities) to implement regulation related to immigrants. With just and humane immigration reform at a standstill, states and local government have opted, and at times have been forced by elements of the public, to act on this matter by introducing or enacting initiatives that: jeopardize public health; threaten worker's and civil rights; and force local law enforcement to implement immigration laws, damaging relations between police and communities. It is within this context of an elevated push for local immigration enforcement that states have begun to pass laws that mandate the use of E-Verify. This phenomenon is not limited to one geographic area, but rather has come into vogue in a variety of states—many of which have a smaller history of immigration, but have experienced surges in recent years.

Chart 1 examines in detail the status of recent legislation and governors' executive orders in 32 states regarding E-Verify and employer sanctions laws, as of June 2008. Extensive effort has been made to find information about laws in the entirety of the nation. For states that are not listed, there may have been efforts to mandate E-Verify or employer sanctions policies—but it is likely that these were unsuccessful, as they do not appear in other research literature or the media.

Of the 32 states studied, twelve explicitly require all state agencies and/or state contractors to use E-Verify (Arizona, Colorado, Georgia, Idaho, Minnesota, Mississippi, Missouri, North Carolina, Oklahoma, Rhode Island, South Carolina, and Utah). An additional nine states do not explicitly require the E-Verify system for public contractors, but require contractors to state that they do not hire undocumented workers, or punishes state contractors for hiring undocumented workers (Arkansas, Delaware, Louisiana, Massachusetts, Nevada, Pennsylvania, Tennessee, Virginia, and West Virginia). Further, two states provide sanctions for businesses receiving public money from the state that hire undocumented workers (Iowa and Texas). In total, 23 states in some way restrict state employment (direct or indirect) or monies to entities that do not employ undocumented workers.

Four states have passed laws that require every employer in the state to participate in E-Verify (Arizona, Mississippi, Missouri, and South Carolina). An additional four states do not mandate E-Verify, but either encourage all employers to use the system, require all employers to state that they do not hire undocumented workers, or provide sanctions for employers that hire undocumented workers (Nevada, Tennessee, Virginia, and West Virginia). Tennessee assures employers safe harbor and protection against prosecution if they use the system. Oregon uniquely bans all farm labor contractors from hiring undocumented workers. In total, nine states have implemented some form of sanction against independent employers (e.g. not affiliated with the state) who hire undocumented workers.

Along with employer sanctions laws, some states have passed provisions that can be viewed as particularly discriminatory against workers. These provisions may contradict federal law and may be illegal. For example, Mississippi declares all undocumented workers who secure employment to be felons. Mississippi also declares it a “discriminatory practice” for businesses to fire a documented worker and hire an undocumented worker.

Illinois is the only state to have passed restrictions on the use of E-Verify or to pass legislation to strengthen anti-discrimination laws relating to E-Verify. However, legislators in Rhode Island proposed a resolution against E-Verify, and legislators in California have proposed legislation to discourage its usage.⁶⁹

It should also be noted that these mandates are not limited to state governments, but are being adopted by a wide variety of levels of government, in a piecemeal fashion. For example, school districts such as the Kern High School District in California and Charlotte-Mecklenburg Schools in North Carolina have adopted E-Verify, as have counties such as Hartford County in Maryland and Gwinnett County in Georgia, and cities such as Mission Viejo in California.⁷⁰ Also note, however, that the implementation of E-Verify at local levels has not gone without challenges. For example, in June of 2008, a Suffolk County, New York, legislator withdrew his own E-Verify bill because of concerns that it might be used to discriminate against workers.⁷¹

QUESTIONABLE LEGALITY OF STATE EMPLOYER SANCTIONS LAWS BY LOCAL GOVERNMENTS

The legality of employer sanctions laws introduced or enacted by states or local governments is currently being determined, as these they may pre-empt federal laws. An issue of contention is whether or not states can punish businesses for noncompliance with immigration laws. A variety of lawsuits have been launched by business, civil rights, and immigrants’ rights advocates against states such as Arizona, Colorado, and Oklahoma. Because state-based employer sanctions programs and E-Verify mandates are relatively new, they remain largely untested in higher courts.

Several recent legal challenges have thrown into contention the entire legal validity of employer sanctions laws. Employer sanctions laws often accompany E-Verify requirements in recent state legislation, and act as “teeth” compelling compliance with enrollment in E-Verify. Although these laws vary from state to state, the common feature is that states that enact them propose penalties (either monetary, criminal, or a cancellation/suspension of business license) upon businesses that are found to employ undocumented immigrants.

Oklahoma had enacted such a law in 2007, which provided penalties for state contractors who employ undocumented workers. The law is being challenged in the Tenth Circuit Court of Appeals under the argument that states are explicitly barred from sanctioning employers under the Immigration Control and Reform Act of 1986, Section 1324a(h)(2), which states “the provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.” State statutes cannot be enforced if they improperly conflict with federal law, according to the Supremacy clause of the constitution. Statutes that concern anything other than “licensing and similar laws”—the “savings clause”—would be pre-empted by IRCA.

Oklahoma is currently being sued by the U.S. Chamber of Commerce and a variety of local Oklahoma Chambers of Commerce in the US District Court for the Western District of Oklahoma. The plaintiffs are arguing that enforcement of the Act will do damage to their clients,

a variety of businesses in the state that seek to do business as state contractors. In the case of the Oklahoma law—the Oklahoma Taxpayer and Citizen Protection Act of 2007—the primary penalty for noncompliance with the employer sanctions and E-Verify law is taxation. Because of this factor, the defendants claim that the court cannot consider the matter under “the Tax Injunction Act, 28 U.S.C. § 1341, and/or the Supremacy Clause”—and thus the matter should be considered in state court.⁷² However, the Tax Injunction Act addresses the nature of the tax, and whether or not it is a regular tax or a regulatory fee. Because the State wishes to regulate and control behavior, the “tax” can be considered a fee or civil sanction—and it thus can be considered by the court. In addition, fees and other civil sanctions do not fall into the IRCA exemption—they are not “licensing or similar laws.” On June 4, 2008, Judge Robin Cauthron of the US District Court for the Western District of Oklahoma agreed with the plaintiffs that the enforcement-related provisions of the Oklahoma law “are substantially likely” to be pre-empted, and granted a preliminary injunction blocking the enforcement of those provisions.⁷³ Although, as of the date of this writing, there has been no final determination in this case, the arguments against the Oklahoma law indeed seem compelling.

An appeal has been filed in the U.S. Ninth Circuit Court of Appeals in San Francisco, challenging the Legal Arizona Workers Act (LAWA), on behalf of the U.S. Chamber of Commerce, local Chambers of Commerce, and employers’ organizations such as the Arizona Farm Bureau Federation and the Arizona Restaurant and Hospitality Association, among others. The punishment embedded in LAWA is the cancellation of a business license. The plaintiffs argue the case does not deal with “express preemption,” but rather “conflict preemption.”⁷⁴ That is, the plaintiffs argue that E-Verify, as it was set forth in the IIRIRA, was intended as a voluntary program, and has not yet been made mandatory by Congress. The plaintiffs also argue that:

“the Act’s employer sanctions provisions also conflict with federal law by bypassing and contradicting the federal system for determining and adjudicating violations, imposing standards and criteria for triggering an investigation and prosecution that diverge from federal law, undermining defenses that an employer is entitled to assert under IRCA, and imposing penalties that radically exceed federal law.”⁷⁵

That is, the State has set up a separate system for determining who is and who is not an undocumented immigrant, and the penalties they are far harsher than those embedded in IRCA. The plaintiffs further argue that the interpretation of the savings clause is overly broad.⁷⁶ The final ruling in this case may well hinge on whether or not the savings clause allows state governments to cancel the business licenses of enterprises found to be in violation, according to Arizonan officials, as well as whether or not it is appropriate for the state to set up a state enforcement regime that is separate from the federal system.

It may be ultimately decided that, barring legislative changes to that section of the IRCA, state-level employer sanctions laws are unconstitutional. Regardless, pending litigation in a variety of courts will likely frame the discussion of the legality of employer sanctions laws in the distant future.

CONCLUSION

The imposition of E-Verify mandates (as a tactic under the umbrella of employer sanctions laws), both at federal and local level, may have a number of unintended consequences

for both employers and workers, and it does not address the problem of the current unauthorized immigrant population. For businesses, these consequences may include higher costs, difficulty in maintaining their workforces, and vulnerability to discrimination lawsuits. For workers, impacts may include discrimination and difficulty in correcting their status with the SSA. In addition, undocumented workers may be pushed further underground, where they are more likely to be exploited.

In the absence of federal comprehensive immigration reform, states have begun to enact laws that put enforcement of immigration into their own hands. Recent state laws, with a few notable exceptions, have tended to favor an enforcement-only approach, which does nothing to address the causes of undocumented immigration. However, these approaches may have demonstrably negative effects on local tax revenue and economies. This cobbled together patchwork of laws is not a solution for the lack of comprehensive immigration reform.

POLICY RECOMMENDATIONS

- A just and humane immigration reform must be enacted to truly address our broken immigration system.
- Expansion of E-Verify should be reconsidered until the multitude of problems in its database is corrected, and until it can be guaranteed that eligible workers, legal permanent residents, and naturalized citizens will not be negatively affected.
- There is sufficient cause to believe that state employer sanctions mandate by states and local governments may be deemed unconstitutional, as they directly conflict with the stipulations of IRCA. States should be wary of imposing new employer sanctions laws until they have been fully tested by the courts.
- Noting the potential for numerous violations of workers' rights that may be triggered by use of E-Verify and de-facto encouraged by employer sanctions laws, states should enhance their anti-discrimination efforts. While it may not be constitutional to bar businesses from using E-Verify, it is constitutional to protect the rights of workers.
- Towards the goal of promoting workers rights and higher wages for citizens as well as for immigrants, states would likely be better served by strengthening labor protections and labor enforcement, as opposed to enforcing immigration law.

CHART 1

STATE	STATUS OF RECENT LAWS RELATING TO E-VERIFY AND EMPLOYER SANCTIONS AS OF JUNE, 2008
ARIZONA	Passed 2007; All Employers Must Use E-Verify; Business License Suspended for Employing Undocumented Workers; Passed 2008; Clarifying Amendment to Law; Legal Challenges ⁷⁷
ARKANSAS	Passed 2007; Technically Does Not Explicitly Require E-Verify, But Requires All Contractors to Certify that They Do Not Employ Undocumented Workers ⁷⁸
CALIFORNIA	Proposed Legislation to Prevent Use of E-Verify by State Agencies; Proposed Legislation to Require E-Verify (Died in Committee in 2008) ⁷⁹
COLORADO	Passed 2006; All Public Contractors Must Use E-Verify; Passed 2008; Notifies All Employers of Federal Penalties for Hiring Undocumented; Notifies All Employers of E-Verify Proposed Legislation; Require E-Verify for All Employers (Died in Committee 2008) ⁸⁰
DELAWARE	Passed 2007; Public Contractors Must Not Hire Undocumented Workers ⁸¹
FLORIDA	Proposed Legislation (Died in Committee in 2008) ⁸²
GEORGIA	Passed 2006; All Public Employers and Public Contractors (With 100 or More Employees) Must Use E-Verify ⁸³
IDAHO	Governor's Executive Order 2006; All Public Employers and Public Contractors Must Use E-Verify; Proposed Legislation 2008; All Employers Must Use E-Verify and Cancellation of Business License for Hiring Undocumented Workers (Appears to Have Died in Committee) ⁸⁴
ILLINOIS	Passed 2007; Legislation Against Use of E-Verify; Legal Action Pending; Passed 2007; Legislation Strengthening Anti-Discrimination Protections; Proposed Legislation 2008; Allow E-Verify/Annul 2007 Law (Approved by Senate; Failed in House) ⁸⁵
INDIANA	Proposed Legislation 2008 (Died in Committee) ⁸⁶
IOWA	Passed 2007; Businesses that Receive Public Development Money Must Not Hire Undocumented ⁸⁷
KANSAS	Proposed Legislation; Voluntary Enrollment in E-Verify; Civil Sanctions for Hiring Undocumented Workers; Safe Haven for Businesses that Use E-Verify; Illegal for Unions to Knowingly Collect Dues from Undocumented Workers (House and Senate Could Not Reconcile Versions Before End of Legislative Session in 2008) ⁸⁸
KENTUCKY	Proposed Legislation 2008 (Died in Committee) ⁸⁹
LOUISIANA	Passed 2006; Cease and Desist Orders to Contractors that Hire Undocumented; Possible \$10,000 Fine; Requires I-9 Forms, Not E-Verify; Proposed Legislation 2008; Penalties for State Contractors that Hire Undocumented Workers ⁹⁰
MASSACHUSETTS	Governor's Executive Order 2007; Public Contractors Cannot Hire Undocumented; Does Not Explicitly Mention E-Verify ⁹¹
MINNESOTA	Governor's Executive Order 2008; All Public Contractors over \$50,000, Subcontractors, and Agencies Must Use E-Verify; Proposed Legislation 2008; All Employers Must Use E-Verify; Fine or Penalty for Employing Undocumented Workers; Exemption for E-Verify Users (Appears to Have Died in Committee) ⁹²
MISSISSIPPI	Passed 2008; All Employers Must Use E-Verify; Felony for

	Undocumented People to Work, and No Bail; “Discriminatory Practice” to Fire Citizen and Hire Undocumented Worker; Employers Not Liable if Used E-Verify ⁹³
MISSOURI	Governor’s Executive Order 2007; Public Contractors and State Agencies Must Use E-Verify; “Zero Tolerance” Policy for State Contractors That Employ Undocumented Immigrants; Passed 2008; All Employers Required to Use E-Verify; Penalties up to \$100,000 for Hiring Undocumented Workers; Safe Harbor for Those Who Use E-Verify ⁹⁴
NEBRASKA	Proposed Legislation 2008 (Died in Committee) ⁹⁵
NEVADA	Passed 2007; Penalties for Businesses that Use Undocumented Workers; Department of Business and Industry Required to Place Link to E-Verify on Department’s Website ⁹⁶
NEW JERSEY	Proposed Legislation 2008; All Employers Must Use E-Verify (Referred to Senate Labor Committee) ⁹⁷
NORTH CAROLINA	Passed 2006; All Public Agencies Must Use E-Verify; Proposed Legislation 2008, All Businesses Must Use E-Verify, Died in Committee ⁹⁸
OKLAHOMA	Passed 2007; All Public Agencies, Public Contractors, and Subcontractors Must Use E-Verify; Legal Challenges 2008 Including Injunction Against Employer Sanctions ⁹⁹
OREGON	Passed 2007; Bars Farm Labor Contractors from Hiring Undocumented Immigrants ¹⁰⁰
PENNSYLVANIA	Passed 2006; Public Contractors May Not Hire Undocumented Workers; Violating Contractors Must Repay Loans or Grants to the State and May Not Bid for Two Years After Violation; Proposed Legislation 2007 ¹⁰¹
RHODE ISLAND	Governor’s Executive Order 2008; Public Administrators and Contractors Must Use E-Verify; Proposed Legislation For All Businesses to Use E-Verify (Approved by House; Senate Labor Committee Voted to Hold Bill for Further Study); Proposed Legislation 2008; Resolution Against E-Verify ¹⁰²
SOUTH CAROLINA	Passed 2008; All Employers Must Use E-Verify; \$1000 Fine Per Undocumented Worker; Bars Undocumented Students from Attending Public Colleges; Transporting Undocumented and Forging Documents now Felony Crimes; Proposed Legislation 2008; “SC Verify” System (Not Part of Final Legislation) ¹⁰³
TENNESSEE	Passed 2007; Business License Suspended or Denied for Hiring Undocumented Workers; Safe Haven for Employers that Use E-Verify; Passed 2006; State Contractors Face Year Suspension for Hiring Undocumented Immigrants ¹⁰⁴
TEXAS	Passed 2007; Public Subsidies Denied for Businesses that Hire Undocumented Workers, or Businesses Must Repay Subsidies; Does Not Require E-Verify ¹⁰⁵
UTAH	Passed 2008; All Public Contractors and Agencies Must Use E-Verify or SSNVS ¹⁰⁶
VIRGINIA	Passed 2008; Business License Suspended for Employing Undocumented Workers; Requires Public Agencies and Contractors to Sign Statement That They Do Not Employ Undocumented Workers ¹⁰⁷
WEST VIRGINIA	Passed 2007; Hiring Undocumented Immigrants is Misdemeanor Crime Punishable By Fine or Jail Time; Business License May Be Suspended or Cancelled; E-Verify Not Required ¹⁰⁸

ENDNOTES

- ¹ Lyndon B. Johnson School of Public Affairs. "U.S. Commission on Immigration Reform." *University of Texas at Austin*. April 20, 1998. Accessed 22 July 2008. <<http://www.utexas.edu/lbj/uscir/>>.
- ² Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub.L. 104-208, Div. C, 110 Stat. 3009-546. 1996. Accessed 18 July 2008. <<http://www.uscis.gov/propub/ProPubVAP.jsp?dockey=2b289cf41dd6b70a61a078a9fbfbc379>>.
- ³ Westat, "Interim Findings of the Web-Based Basic Pilot Evaluation," Report submitted to United States Department of Homeland Security, Washington, DC. December 2006. Accessed 18 July 2008. <<http://www.uscis.gov/files/article/WebBasicPilotRprtSept2007.pdf>>.
- ⁴ Social Security Administration. "Agency Priorities as We Move Forward." *Social Security Administration*. 2008. Accessed 24 November, 2008. <<http://www.socialsecurity.gov/finance/2008/Key%20Priorities.pdf>>.
- ⁵ Hockstader, Lee. "Arizona's Immigration Two-Step." *The Washington Post*. 21 April 2008. Accessed 18 July 2008. <<http://www.washingtonpost.com/wp-dyn/content/article/2008/04/20/AR2008042001755.html>>.
- ⁶ United States. Office of the Press Secretary. "Remarks by Homeland Security Secretary Michael Chertoff and Department of Commerce Secretary Gutierrez at the State of Immigration Address." *Department of Homeland Security*. Press Release. 9 June 2008. Accessed 18 July 2008. <http://www.dhs.gov/xnews/releases/pr_1213101513448.shtm>. United States. Office of the Press Secretary. "Executive Order: Amending Executive Order 12989, as Amended." *The White House*. June 9, 2008. Accessed 18 July 2008. Press Release. <<http://www.whitehouse.gov/news/releases/2008/06/20080609-2.html>>.
- ⁷ Westat, supra.
- ⁸ Ibid.
- ⁹ Hamer, Glenn. "Arizona Chamber Policy Brief: Basic Pilot Webinar Program." *Arizona Chamber of Commerce and Industry*. February 9, 2007. Accessed 18 July 2008. <http://www.azchamber.com/pdfs/2007_feb_policy-brief.pdf>.
- ¹⁰ Westat, supra.
- ¹¹ Harper, Jim. "Policy Analysis: Electronic Employment Eligibility Verification: Franz Kafka's Solution to Illegal Immigration." *Cato Institute* No. 612. March 5 2008. Accessed 18 July 2008. <http://www.cato.org/pub_display.php?pub_id=9256>.
- ¹² Westat, supra, at xx.
- ¹³ United States Government Accountability Office. "Immigration Enforcement: Weaknesses Hinder Employment Verification and Worksite Enforcement Efforts," August 2005. (GAO-05-813) <<http://www.gao.gov/new.items/d05813.pdf>> 23.
- ¹⁴ <http://www.usdoj.gov/crt/osc/htm/facts.htm>
- ¹⁵ Westat, supra, at xxi.
- ¹⁶ Office of the Inspector General, Social Security Administration. "Accuracy of the Social Security Administration's Numident File." *Congressional Response Report A-08-06-26100*. December 2006. Accessed 18 July 2008. <<http://www.socialsecurity.gov/oig/ADOBEPDF/audittxt/A-08-06-26100.htm>>.
- ¹⁷ Westat, supra, at xxii-xxiii.
- ¹⁸ Riccardi, Nicholas. "Arizona slams door on illegal immigrants." *Los Angeles Times*. 5 April 2008. Accessed 29 April 2008. <<http://www.latimes.com/news/nationworld/world/la-na-arizimmig5apr05.1.9576.story>>.
- ¹⁹ Office of Communications. "USCIS Announces Enhancements to E-Verify Program." United States Citizenship and Immigration Services. Press Release. May 5, 2008. Accessed 18 July 2008. <<http://www.uscis.gov/files/article/everify050508.pdf>>.
- ²⁰ Preston, Julia. "Legal Permanent Residents Facing Longer Wait." *The New York Times*. January 2008. Accessed 27 July 2008. <<http://www.nytimes.com/2008/01/18/us/18immig.html>>.
- ²¹ Bilyk, Jonathan. "E-Verify has problems, but most find it valuable." *Kane County Chronicle*. May 16, 2008. Accessed 18 July 2008. <<http://www.kcchronicle.com/articles/2008/05/16/news/local/doc482d90d277c11820619339.txt>>.
- ²² Westat, supra, at xxii.
- ²³ Harris, Craig. "Niche rises from sanctions law." *The Arizona Republic*. May 11, 2008. Accessed 18 July 2008. <<http://www.azcentral.com/business/articles/2008/05/11/20080511biz-everify0511.html>>.
- ²⁴ Ibid.
- ²⁵ Ibid.
- ²⁶ Ibid.

- ²⁷ Westat, supra, at xxii.
- ²⁸ Harper, supra.
- ²⁹ Peter A. Creticos. "Assessing the Economic Effects of State Laws Addressing the Employment of Foreign-Born Unauthorized Workers." *National Association of Homebuilders, National Roofing Contractors Association, U.S. Chamber of Commerce*. December 2007. Accessed 18 July 2008. <<http://www.stateimmigrationlaws.com/NR/rdonlyres/ezlhnhx5f64asl4rqdymrlyo6xg7qnimzfd4ur2zqtiv5lrdui4cglp2p4a3wi64b7sekr23ib37prytng4rbg73b5b/ImmigrationReport12%2e11.pdf>>.
- ³⁰ Harper, supra.
- ³¹ Immigration Policy Center. "E-Verify and Arizona: Early Experiences for Employers, Employees, and the Economy Portend a Rough Road Ahead." *Immigration Policy Center*. May 2008. Accessed 18 July 2008. <<http://www.immigrationpolicy.org/images/File/factcheck/AZE-verify04-08.pdf>>.
- ³² Hopfensperger, Jean. "Employers fret over worker ID mandate." *Star Tribune*. March 2, 2008. Accessed 18 July 2008. <<http://www.startribune.com/local/16168812.html>>.
- ³³ *Aramark Facility Services v. Service Employees International Union, Local 1877, AFL CIO CLC*, No. 06-56662, D.C. No. CV-06-00608-GPS. 9th Circuit Court Opinion. June 16, 2008. <[http://www.ca9.uscourts.gov/ca9/newopinions.nsf/FBBF4D1866EEE2E28825746A004EA536/\\$file/0656662.pdf?openelement](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/FBBF4D1866EEE2E28825746A004EA536/$file/0656662.pdf?openelement)>.
- ³⁴ Harris, Craig. "Court ruling clouds use of E-Verify." *Arizona Republic*. June 19, 2008. Accessed 18 July 2008. <<http://www.azcentral.com/business/articles/2008/06/19/20080619biz-sanctions0619.html>>.
- ³⁵ <http://www.uscis.gov/files/nativedocuments/MOU.pdf>
- ³⁶ Harper, supra..
- ³⁷ Bunis, Dena. "Employment verification days are numbered." *Orange County Register*. May 6, 2008. Accessed 18 July 2008. <http://www.ocregister.com/ocregister/news/local/immigration/article_2035598.php>.
- ³⁸ Hopfensperger, Jean. "Employers fret over worker ID mandate." *Star Tribune*. March 2, 2008. Accessed 18 July 2008. <<http://www.startribune.com/local/16168812.html>>.
- ³⁹ Westat, supra, xxiii.
- ⁴⁰ Ibid.
- ⁴¹ Ibid.
- ⁴² Ibid.
- ⁴³ United States Citizenship and Immigration Services. "E-Verify Memorandum of Understanding." *United States Citizenship and Immigration Services*. July 18, 2007. Accessed 18 July 2008. <<http://www.uscis.gov/files/nativedocuments/MOU.pdf>>.
- ⁴⁴ <http://www.usdoj.gov/eoir/OcahoMain/274b.pdf>
- ⁴⁵ [http://azeir.org/pdf/12-28-07PHXLaborAlert\(1\).pdf](http://azeir.org/pdf/12-28-07PHXLaborAlert(1).pdf)
- ⁴⁶ <http://www.uscis.gov/files/nativedocuments/e-ver-employee-rights.pdf>
- ⁴⁷ <http://www.usdoj.gov/crt/osc/htm/facts.htm>
- ⁴⁸ Marks, Alexandra. "With E-Verify, Too Many Errors to Expand Its Use?" *Christian Science Monitor*. July 7, 2008. Accessed 18 July 2008. <<http://www.csmonitor.com/2008/0707/p02s01-usgn.html>>. Witte, Griff. "Expanded Worker Checks Would Use Faulty System." *Washington Post*. May 25, 2006. Accessed 18 July 2008. <<http://www.washingtonpost.com/wp-dyn/content/article/2006/05/24/AR2006052402400.html>>.
- ⁴⁹ Smith, J.J. "Meisinger Urges Congress To Replace E-Verify System." *Society for Human Resource Management*. May 7, 2008. Accessed 18 July 2008. <http://www.shrm.org/hrnews_published/CMS_025535.asp>.
- ⁵⁰ Ibid.
- ⁵¹ Riccardi, Nicholas. "Arizona slams door on illegal immigrants." *Los Angeles Times*. 5 April 2008. Accessed 29 April 2008. <<http://www.latimes.com/news/nationworld/world/la-na-arizimmig5apr05.1.9576.story>>.
- ⁵² Center for an Urban Future, "A World of Opportunity." February 2007. <http://www.nycfuture.org/images_pdfs/pdfs/IE-final.pdf>.
- ⁵³ Immigration Policy Center. "E-Verify and Arizona: Early Experiences for Employers, Employees, and the Economy Portend a Rough Road Ahead." *Immigration Policy Center*. May 2008. Accessed 18 July 2008. <<http://www.immigrationpolicy.org/images/File/factcheck/AZE-verify04-08.pdf>>.
- ⁵⁴ Kiely, Kathy. "Employer-verification proposal draws fire." *USA Today*. May 24, 2007. Accessed 18 July 2008. <http://www.usatoday.com/news/washington/2007-05-24-employer-verification_N.htm>.
- ⁵⁵ Hopfensperger, Jean. "Employers fret over worker ID mandate." *Star Tribune*. March 2, 2008. Accessed 18 July 2008. <<http://www.startribune.com/local/16168812.html>>.

-
- ⁵⁶ Chertoff, Michael. "Testimony of Secretary Michael Chertoff before the House Subcommittee on Homeland Security Appropriations." *Department of Homeland Security*. April 10, 2008. Accessed 18 July 2008. <http://www.dhs.gov/xnews/testimony/testimony_1207933887848.shtm>.
- ⁵⁷ The Congressional Budget Office. Letter to Representative John Conyers and the Committee on the Judiciary. *Congressional Budget Office*. April 4, 2008. Accessed 18 July 2008. <<http://www.cbo.gov/ftpdocs/91xx/doc9100/hr4088ltr.pdf>>.
- ⁵⁸ Stana, Richard M. "Employment Verification: Challenges Exist in Implementing a Mandatory Electronic Employment Verification System." Testimony Before the Subcommittee on Social Security, Committee on Ways and Means, House of Representatives. *Government Accountability Office*. GAO-07-924T. June 7, 2007. Accessed 18 July 2008. <<http://www.gao.gov/cgi-bin/getrpt?GAO-07-924T>>.
- ⁵⁹ Ibid.
- ⁶⁰ Ibid.
- ⁶¹ Editorial Board. "What Social Security Isn't Meant to Do." *The New York Times*. May 12, 2008. Accessed 18 July 2008. <<http://www.nytimes.com/2008/05/12/opinion/12mon1.html?hp>>.
- ⁶² The Congressional Budget Office. April 4, 2008, supra.
- ⁶³ Bruner, Mike. Immigration Bills Would Cuff Builders. *Tampa Bay Online*. March 14, 2008. Accessed 18 July 2008. <<http://www2.tbo.com/content/2008/mar/14/na-immigration-bills-would-cuff-builders/>>.
- ⁶⁴ Novack, Janet. "Who's Gonna Do the Work?" *Forbes*. October 1, 2007. Accessed 18 July 2008. <<http://www.forbes.com/entrepreneurs/forbes/2007/1001/036.html>>.
- ⁶⁵ Ibid.
- ⁶⁶ Creticos, supra.
- ⁶⁷ Ibid.
- ⁶⁸ National Conference of State Legislatures. "Overview of state legislation related to immigrants and immigration." April 2008. <<http://www.ncsl.org/print/immig/immigreportapril2008.pdf>>.
- ⁶⁹ California State. Assembly. To add Article 2.5 (commencing with Section 2811) to Chapter 2 of Division 3 of the Labor Code, relating to employment. AB 2076. 2008 reg. sess. Accessed 18 July 2008. <http://info.sen.ca.gov/pub/07-08/bill/asm/ab_2051-2100/ab_2076_bill_20080430_amended_asm_v96.pdf>.
- ⁷⁰ "High School District To Check Employee Resident Status." *KERO 23-ABC*. May 6, 2008. Accessed 18 July 2008. <<http://www.turmt23.com/news/16174863/detail.html>>. Harford County Executive. "Harford County Begins E-Verify Program." Press Release. *Harford County Government*. September 18, 2007. Accessed 18 July 2008. <<http://www.harfordcountymd.gov/pressview.cfm?ID=2352>>. Pearson, Michael. "Vendors seeking contracts in Gwinnett must check employees' immigration status." *The Atlanta Journal-Constitution*. March 4, 2008. Accessed 18 July 2008. <http://www.ajc.com/metro/content/metro/gwinnett/stories/2008/03/04/contracts_0305.html?cxntlid=inform_sr>. Hodge, Alan. "Checking The County Payroll For Illegals." *Rhinoceros Times*. May 1, 2008. Accessed 18 July 2008. <http://charlotte.rhinotimes.com/Articles-i-2008-05-01-178485.112113_Checking_The_County_Payroll_For_Illegals.html>. "City of Mission Viejo Agenda Report." *Verifications Inc*. March 19, 2007. Accessed 18 July 2008. <<http://www.verificationsinc.com/pdf/mission-viejo-e-verify-ordinance.pdf>>.
- ⁷¹ German, Erik. "Suffolk lawmaker to withdraw worker verification bill." *Newsday*. June 26, 2008. Accessed 18 July 2008. <<http://www.newsday.com/news/printedition/longisland/ny-poimmi265741749jun26,0,6303147.story>>.
- ⁷² Chamber of Commerce of the United States of America vs. Brad Henry, CIV-08-109-C. Preliminary Injunction (Oklahoma, 2008). <<http://www.uschamber.com/assets/nclc/henrypreliminjunction.pdf>>.
- ⁷³ Lewandowski, Kiely. "Federal judge enjoins Oklahoma immigration law employer provisions." *Jurist Legal News and Research*. June 05, 2008. Accessed 18 July 2008. <<http://jurist.law.pitt.edu/paperchase/2008/06/federal-judge-enjoins-oklahoma.php>>. Chamber of Commerce of the United States of America vs. Brad Henry, CIV-08-109-C. Preliminary Injunction (Oklahoma, 2008). <<http://www.uschamber.com/assets/nclc/henrypreliminjunction.pdf>>.
- ⁷⁴ <http://azeir.org/pdf/unofficial-transcript-oral-argument.pdf>
- ⁷⁵ <http://azeir.org/pdf/appellants-reply-brief.pdf>
- ⁷⁶ <http://azeir.org/pdf/appellants-reply-brief.pdf>
- ⁷⁷ "Legal Arizona Workers Act." *Maricopa County Attorney's Office*. 2008. Accessed 18 July 2008. <<http://www.maricopacountyattorney.org/lawa/everify.html>>.
- ⁷⁸ "Several States Enact Employment Verification Laws." *Fragomen, Del Rey, Bernsen & Loewy, LLP*. June 20, 2007. Accessed 18 July 2008.

<http://pubweb.fdbl.com/news1.nsf/7f4d7596b0572ba886256e3100809439/c6df54dc10e088f485257300006ef03b?OpenDocument>>.

⁷⁹ California State. Assembly. An act to add Article 2.5 (commencing with Section 2811) to Chapter 2 of Division 3 of the Labor Code, relating to employment. AB 2076. 2008 reg. sess. Accessed 18 July 2008.

http://info.sen.ca.gov/pub/07-08/bill/asm/ab_2051-2100/ab_2076_bill_20080430_amended_asm_v96.pdf>.

California State. Assembly. An act to add Chapter 5 (commencing with Section 1705) to Part 6 of Division 2 of the Labor Code, relating to employment. AB 2421. 2008 reg. sess. Accessed 18 July 2008.

http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_2401-2450/ab_2421_bill_20080221_introduced.html>.

⁸⁰ “Guide to Public Contracts for Services and Illegal Aliens Law.” *Colorado Division of Labor*. 2008. Accessed 18 July 2008. <http://www.coworkforce.com/lab/pcs/1343CompleteGuideFinal.pdf>>. “Q&A for Implementation of HB 06-1343: Illegal Aliens and Personal Services Contracts.” Colorado Department of Personnel and Administration. November 8, 2006. Accessed 18 July 2008.

http://www.colorado.gov/dpa/dfp/sco/FiscalRules/emergency/HB1343_Q&A.pdf>. “Several States Enact Employment Verification Laws.” *Fragomen, Del Rey, Bernsen & Loewy, LLP*. June 20, 2007. Accessed 18 July 2008.

<http://pubweb.fdbl.com/news1.nsf/7f4d7596b0572ba886256e3100809439/c6df54dc10e088f485257300006ef03b?OpenDocument>>.

Colorado State. Senate. Concerning Notification to Employers of the Federal Electronic Verification Program for Use in Verifying the Work Eligibility Status of New Employees. SB 08-139. 2008 reg. sess. Accessed 18 July 2008.

http://www.leg.state.co.us/clics/clics2008a/csl.nsf/fsbillcont/F5A6D5B7E73937F9872573CA00798947?Open&file=139_enr.pdf>.

Colorado State. Senate. Concerning the Verification of the Work Eligibility Status of New Employees Through the Federal Electronic Verification Program. SB 08-083. 2008 reg. sess. Accessed 18 July 2008.

http://www.leg.state.co.us/clics/clics2008a/csl.nsf/fsbillcont/33D4F91CA8A25D0287257368005AF9AC?Open&file=083_01.pdf>.

⁸¹ Bord, Eric S. “50-State Survey of State Immigration Laws Affecting Employers.” *Morgan, Lewis and Bockius, LLP*. June 5, 2008. Accessed 18 July 2008.

http://www.morganlewis.com/documents/50StateSurvey_StateImmigrationLaws.pdf>. Delaware State. Senate. An Act to Amend Title 29 of the Delaware Code Relating to State Procurement. SB 132. 2007 reg. sess. Accessed 18 July 2008. [http://legis.delaware.gov/LIS/lis144.nsf/vwLegislation/SB+132/\\$file/legis.html?open](http://legis.delaware.gov/LIS/lis144.nsf/vwLegislation/SB+132/$file/legis.html?open)>.

⁸² Florida State. House. Florida Safe Borders Act of 2008. HB 821. 2008 reg. sess. Accessed 18 July 2008.

<http://flhouse.gov/Sections/Bills/billsdetail.aspx?BillId=38318&SessionId=57>>.

⁸³ Georgia State. Senate. Georgia Security and Immigration Compliance Act. SB 529. 2006 reg. sess. Accessed 18 July 2008. http://www.legis.state.ga.us/legis/2005_06/fulltext/sb529.htm>.

⁸⁴ Idaho State. Senate. Employment of Unauthorized Aliens. SB 1513. 2008 reg. sess. Accessed 18 July 2008.

<http://www3.idaho.gov/oasis/S1513.html#billtext>>. “Alien Verification Initiative.” *Office of the Governor*. 2007.

http://gov.idaho.gov/save/alien_verification.html>. “Executive Order No. 2006-40/ Establishing a Policy for All State Agencies Concerning Illegal Immigrants.” *Office of the Governor*. 2006. Accessed 18 July 2008.

http://gov.idaho.gov/mediacenter/execorders/eo06/eo_2006-40.html>.

⁸⁵ Ill.Rev.Stat. Ch. 48, par. 2851. Accessed 18 July 2008.

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2398&ChapAct=820%20ILCS%2055/&ChapterID=68&ChapterName=EMPLOYMENT&ActName=Right+to+Privacy+in+the+Workplace+Act>>.

Ill.Rev.Stat. Ch. 68, par. 2-102. <http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=095-0137>>. United States of America v. The State of Illinois. Complaint. (Illinois, 2007).

http://www.dhs.gov/xlibrary/assets/US_v_Illinois_Complaint_092407_to_File.pdf>.

Illinois State. Senate. Right to Privacy in the Workplace Act Amendment. SB1878. 2008 reg. sess. Accessed 18 July 2008.

<http://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=51&GA=95&DocTypeId=SB&DocNum=1878&GAID=9&LegID=34563&SpecSess=&Session=>>.

⁸⁶ Vock, Daniel C. “States think smaller, slower on immigration.” *Stateline.org*. April 03, 2008. Accessed 18 July 2008. <http://www.stateline.org/live/details/story?contentId=297325>>. “Immigration Policy in the States- Mid-session Developments.” *Progressive States Network*. March 27th, 2008. Accessed 18 July 2008.

<http://www.progressivestates.org/content/807/immigration-policy-in-the-states-mid-session-developments#1>>.

Martin, Deanna. “Employer sanctions for ‘illegals’ backed.” *The Journal Gazette*. January 24, 2008. Accessed 18

July 2008.

<http://www.journalgazette.net/apps/pbcs.dll/article?AID=/20080124/LOCAL/801240315/1002/LOCAL>>.

⁸⁷ Bord, supra. Iowa State. Senate. Relating to and Making Appropriations to the Department of Cultural Affairs... SF 562. 2007 reg. sess. Accessed 18 July 2008. <http://coolice.legis.state.ia.us/Cool-ICE/default.asp?Category=billinfo&Service=Billbook&menu=false&hbill=SF562>>.

⁸⁸ Seaton, David A. "Legislators battle the budget." *Arkansas City Traveler*. April 28, 2008. Accessed 18 July 2008. http://www.arkcity.net/stories/042808/com_0001.shtml>. Kansas State. Senate. Kansas Illegal Immigration Enforcement and Reform Act. SB 458. 2008 reg. sess. Accessed 18 July 2008. <http://www.kslegislature.org/bills/2008/458.pdf>>. Associated Press. "Kansas: Immigration issue will be back." *The Joplin Globe*. May 8, 2008. Accessed 18 July 2008.

http://www.joplinglobe.com/statenews/local_story_129230249.html>.

⁸⁹ Vock, Daniel C. "States think smaller, slower on immigration." *Stateline.org*. April 03, 2008. Accessed 18 July 2008. <http://www.stateline.org/live/details/story?contentId=297325>>.

⁹⁰ Immigrant Policy- 2006 State Legislation Related to Immigration. *National Conference of State Legislatures*. October 31, 2006. Accessed 18 July 2008.

<http://www.ncsl.org/programs/immig/6ImmigEnactedLegis3.htm#Employment>>. Louisiana State.Senate. To enact R.S. 23:996, relative to employment of certain aliens... SB 753. 2006 reg. sess. Accessed 18 July 2008.

<http://www.legis.state.la.us/billdata/streamdocument.asp?did=405939>>. Louisiana State. House.

CONTRACTORS: Provides for penalties for licensed contractors with state contracts who employ illegal immigrants. HB 1082. 2008 reg. sess. Accessed 18 July 2008.

<http://www.legis.state.la.us/billdata/streamdocument.asp?did=472592>>.

⁹¹ Bord, supra. Patrick, Deval L. "Executive Order No. 481." *Executive Department, The Commonwealth of Massachusetts*. February 23, 2007. Accessed 18 July 2008. www.lawlib.state.ma.us/execorders/eo481.rtf>.

⁹² Hopfensperger, Jean. "Employers fret over worker ID mandate." *Star Tribune*. March 2, 2008. Accessed 18 July 2008. <http://www.startribune.com/local/16168812.html>>. Gibson, Bonnie K. and Kerry L. Middleton. "United States: Minnesota Government Contractors Now Required To Use E-Verify Program." *Mondaq.com*. January 17, 2008. Accessed 18 July 2008. <http://www.mondaq.com/article.asp?articleid=56134>>. Minnesota State. House. Illegal immigrant hiring penalties provided, aggravated forgery documents offense expanded and penalty increased, and sex trafficking established as a crime separate from promotion of prostitution. HF 4011. 2008 reg. sess. Accessed 18 July 2008.

http://www.house.leg.state.mn.us/bills/billnum.asp?Billnumber=4011&ls_year=85&session_year=2007&session_number=0>. Pawlenty, Tim. "Executive Order 08-01." *Office of the Governor*. January 7, 2008. Accessed 18 July 2008. <http://www.governor.state.mn.us/priorities/governorsorders/executiveorders/PROD008598.html>>.

⁹³ Mississippi State. Senate. Mississippi Employment Protection Act. SB 2988 2008 reg. sess. Accessed 18 July 2008. <http://billstatus.ls.state.ms.us/2008/pdf/history/SB/SB2988.xml>>.

⁹⁴ McConnell, Randy. "Main immigration bill loses support." *Columbia Business Times*. February 22, 2008. Accessed 18 July 2008. <http://columbiabusinesstimes.com/1019/2008/02/22/main-immigration-bill-loses-support>>.

Roughol, Isabelle. "Janitorial business owner sues Blunt over loss of contract following immigration raid." *Columbia Missourian*. October 25, 2007. Accessed 18 July 2008.

<http://www.columbiamissourian.com/stories/2007/10/25/janitorial-business-owner-sues-blunt-over-loss-con/>>.

Robinson, Jessica. "Gov. Blunt Announces New Features of Plan to Fight Illegal Immigration." Press Release.

Office of the Governor. December 17, 2007. Accessed 18 July 2008. <http://www.gov.mo.gov/cgi-bin/coranto/viewnews.cgi?id=EEAZAkylVpZefVZzQA&style=Default+News+Style&tmpl=newsitem>>. Griffin, Marshall. "Missouri House endorses E-Verify legislation." *KWMU*. May 8, 2008. Accessed 18 July 2008.

http://publicbroadcasting.net/kwmu/news.newsmain?action=article&ARTICLE_ID=1274448§ionID=1>.

Missouri State. Senate. Missouri Omnibus Immigration Act. SB 1230. 2008 reg. sess. Accessed 18 July 2008.

http://www.senate.mo.gov/08info/BTS_Web/Bill.aspx?SessionType=R&BillID=148961>. Young, Virginia.

"Lame ducks, term limits, mean slow session." *St. Louis Post-Dispatch*. May 18, 2008. Accessed 18 July 2008.

<http://www.stltoday.com/stltoday/news/stories.nsf/politics/story/4500A377DDB1AA728625744D000B9205?OpenDocument>>. Missouri State. House. To repeal sections 8.283, 302.720, and 544.470, RSMo, and to enact in lieu thereof twenty-four new sections relating to illegal aliens, with penalty provisions, and an effective date for certain sections. HB 1549. 2008 reg. sess. Accessed 18 July 2008.

<http://www.house.mo.gov/billtracking/bills081/bills/hb1549.htm>>.

⁹⁵ Vock, Daniel C. "States think smaller, slower on immigration." *Stateline.org*. April 03, 2008. Accessed 18 July 2008. <http://www.stateline.org/live/details/story?contentId=297325>>.

- ⁹⁶ Bord, supra. Nevada State. Assembly. Relating to immigration... AB 383. 2007 reg. sess. <http://www.leg.state.nv.us/74th/Bills/AB/AB383_EN.pdf>.
- ⁹⁷ New Jersey State. Senate. Concerning the employment 1 of unauthorized aliens and supplementing Title 34 of the Revised Statutes. SB 1312. 2008 reg. sess. Accessed 18 July 2008. <http://www.njleg.state.nj.us/2008/Bills/S1500/1312_I1.PDF>.
- ⁹⁸ "BASIC FAQ's." *North Carolina Office of State Personnel*. 2007. Accessed 18 July 2008. <<http://www.osp.state.nc.us/hr/Foreign%20Nationals/BASIC%20FAQ.pdf>>. Wineka, Mark. "E-Verify service draws praise and criticism." *Salisbury Post*. July 20, 2008. Accessed 18 July 2008. <<http://www.salisburypost.com/Area/072008-everify-sidebar-for-sun>>.
- ⁹⁹ Oklahoma State. House. Oklahoma Taxpayer and Citizen Protection Act of 2007. HB 1804. 2007 reg. sess. Accessed 18 July 2008. <http://webserver1.lsb.state.ok.us/2007-08bills/HB/HB1804_ENGR.RTF>. Lewandowski, Kiely. "Federal judge enjoins Oklahoma immigration law employer provisions." *Jurist Legal News and Research*. June 05, 2008. Accessed 18 July 2008. <<http://jurist.law.pitt.edu/paperchase/2008/06/federal-judge-enjoins-oklahoma.php>>.
- ¹⁰⁰ Bord, supra. Oregon. State. Senate. Relating to farm labor contractor duties; creating new provisions; and amending ORS 658.411, 658.415, 658.417, 658.440, 658.453 and 658.475. SB 202. 2007 reg. sess. Accessed 18 July 2008. <<http://www.leg.state.or.us/07reg/asures/sb0200.dir/sb0202.en.html>>.
- ¹⁰¹ "Chamber promises to oppose "onerous" state immigration laws." *CCH Human Resources Management*. December 25, 2007. Accessed 18 July 2008. <<http://hr.cch.com/news/hrm/122507a.asp>>. Tsai, Roger. "The Immigration Crackdown on Employers." *Business Law Today*. Volume 16, Number 6. July/August 2007. Accessed 18 July 2008. <<http://www.abanet.org/buslaw/blt/2007-07-08/tsai.shtml>>. Pennsylvania State. House. Prohibiting employment of illegal aliens... HB 750. 2007 reg. sess. Accessed 18 July 2008. <<http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=HTM&sessYr=2007&sessInd=0&billBody=H&billTyp=B&billNbr=0750&pn=1013>>.
- ¹⁰² Dujardin, Richard C. "Chief disagrees with Carcieri." *Providence Journal*. April 5, 2008. Accessed 18 July 2008. <http://www.projo.com/news/stategovernment/content/esserman_says_04-05-08_M99LI7M_v17.35881a3.html>. "Target 12 Investigators: Undocumented Workers." *WPRI*. May 9, 2008. Accessed 18 July 2008. <<http://www.eyewitnessnewstv.com/Global/story.asp?S=8292637>>. Hamilton, William. "R.I. employers face possible mandate on E-Verify." *Providence Business News*. April 21, 2008. Accessed 18 July 2008. <<http://www.pbn.com/stories/31211.htm>>. Rhode Island State. Senate. Relating to labor and labor relations. S 2091. 2008 reg. sess. Accessed 18 July 2008. <<http://www.rilin.state.ri.us/billtext08/senatetext08/s2091.pdf>>. Rhode Island State. Senate. Relating to labor and labor relations--Immigrant Status. S 2556. 2008 reg. sess. Accessed 18 July 2008. <<http://www.rilin.state.ri.us/BillText08/SenateText08/S2556.pdf>>. Jerzyk, Matt. "We're Watching the Senate Labor Committee." *Rhode Island's Future*. June 11, 2008. Accessed 18 July 2008. <<http://www.rifuture.org/showDiary.do?diaryId=2978>>.
- ¹⁰³ Wenger, Yvonne. "Immigration deal reached." *The Post and Courier*. April 3, 2008. Accessed 18 July 2008. <http://www.charleston.net/news/2008/apr/03/immigration_deal_reached35934/>. "S.C. House Takes Up Immigration Bill." *WYFF 4*. May 6, 2008. Accessed 18 July 2008. <<http://www.wyff4.com/news/16167196/detail.html>>. Dalton, Robert W. Senate rejects immigration bill. *Spartanburg Herald-Journal*. May 15, 2008. Accessed 18 July 2008. <<http://www.goupstate.com/article/20080515/NEWS/805150340/1051/NEWS01>>. South Carolina State. House. South Carolina Illegal Immigration Reform Act. HB 4400. 2008 reg. sess. Accessed 18 July 2008. <http://www.scstatehouse.net/sess117_2007-2008/prever/4400_20080528.htm>.
- ¹⁰⁴ Tsai, supra. National Conference of State Legislatures. "2007 Enacted State Legislation Related to Immigrants and Immigration." *National Conference of State Legislatures*. January 31, 2008. Accessed 18 July 2008. <<http://www.ncsl.org/print/immig/2007Immigrationfinal.pdf>>. Tennessee State. House. To amend Tennessee Code Annotated, Title 39 and Title 50, relative to employment of illegal aliens. HB 729. 2007 reg. sess. Accessed 18 July 2008. <<http://tennessee.gov/sos/acts/105/pub/pc0529.pdf>>. Bord, supra.
- ¹⁰⁵ National Conference of State Legislatures, supra. Texas State. House. Relating to restrictions on the use of certain public subsidies. HB 1196. 2007 reg. sess. Accessed 18 July 2008. <<http://www.capitol.state.tx.us/tlodocs/80R/billtext/pdf/HB01196F.pdf>>.
- ¹⁰⁶ Bulkeley, Deborah. "Omnibus illegals bill gets veto-proof support." *Deseret Morning News*. March 4, 2008. Accessed 18 July 2008. <<http://deseretnews.com/article/1,5143,695258517,00.html>>. Utah State. Senate. Illegal Immigration. SB 81. 2008 reg. sess. Accessed 18 July 2008. <<http://le.utah.gov/%7E2008/htmdoc/sbillhtm/SB0081S01.htm>>. Bord, supra.

¹⁰⁷ Virginia State. House. Illegal aliens; corporate existence terminated involuntarily for employing. HB 926. 2008 reg. sess. Accessed 18 July 2008. <<http://leg1.state.va.us/cgi-bin/legp504.exe?081+sum+HB926>>.

¹⁰⁸ Tsai, supra. West Virginia State. Senate. That §21-1B-2, §21-1B-3 and §21-1B-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted... SB 70. 2007 reg. sess. Accessed 18 July 2008. <http://www.legis.state.wv.us/Bill_Text_HTML/2007_SESSIONS/RS/BILLS/SB70%20SUB1%20enr2.htm>.