Expanding E-Verify Will Undermine Job Growth and Cripple Small Businesses

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Requiring U.S. employers to use an electronic employment eligibility verification system will harm the American economy and U.S. workers while doing little to end the hiring of undocumented workers. Unless currently unauthorized workers are provided a path to legalizing their immigration status, E-Verify[1] will impose new costs on employers, drive jobs into the underground economy, increase unemployment, and deprive the government of revenue.

Requiring employers to use E-Verify will not create new jobs for American workers.

- Some policymakers have simplistically and falsely asserted that requiring employers to use E-Verify will decrease unemployment because "there are almost as many illegal immigrants in the labor force as there are unemployed workers."[2]
- But that's not what the research shows. Unemployment rates among native-born workers are actually lower in areas with higher levels of immigration, because spending by immigrants stimulates the economy and creates additional jobs. In fact, there is no statistically significant relationship between unemployment and recent immigration.[3]
- Moreover, requiring employers to use E-Verify will not free up jobs. In fact, its effect will be to drive more workers and employers into the underground economy, costing the federal government, states, and localities valuable tax revenue.[4]
- E-Verify isn't even effective at preventing unauthorized work: 54 percent of unauthorized workers for whom E-Verify checks were run were erroneously confirmed as being work-authorized.[5]
- The situation in Arizona, where employers are required to use E-Verify, provides a glimpse into how employers across the country would behave if E-Verify were mandated.
  - Though Arizona employers made 1.3 million new hires in the fiscal year that ended in September 2009 and were required by state law to check all of them via E-Verify, they actually checked only 730,000 of them—or slightly more than half.[6]
  - U.S. Immigration and Customs Enforcement (ICE) officials also report that unscrupulous employers have learned that E-Verify's photo-matching tool (which is used to confirm workers' identities through a photo comparison) accepts only two documents, and therefore they ask employees whom they suspect are not work-authorized to provide some other identity document that the photo-matching tool does not accept.[7]

Requiring the use of E-Verify will cause many American workers to lose their jobs.

- Requiring employers to use E-Verify will increase job-loss rates, because every American worker will have to be approved by the government to get a job.

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- For example, after initially being hired for a position, a U.S. citizen telecommunications worker in Florida lost the job due to an E-Verify error. Despite her pleas to government officials, she has been unemployed for several months.[8] Her story will be the story of countless Americans if E-Verify is made mandatory.
- The reality is that where employers are required to use E-Verify, it has been a disaster for American workers. A survey of 376 immigrant workers in Arizona (where use of E-Verify is mandatory) found that 33.5 percent had been fired without receiving a chance to correct erroneous findings because E-Verify didn't immediately confirm that they were work-authorized and *none* of their employers notified them, as required by the rules, that they could appeal the E-Verify finding.[9]
- If use of E-Verify were to become mandatory, about 1.2 million workers would have to contact a government agency or risk losing their jobs[10] and about 770,000 workers would likely lose their jobs.[11] Already, in fiscal year 2009 about 80,000 workers likely received erroneous findings from the system and may have lost their jobs as a result.[12]
- Employers that audit their own E-Verify data report higher error rates than federal government estimates.[13] When Los Angeles County audited its use of E-Verify for county workers, it found that 95 percent of its E-Verify findings were erroneous in 2008-09.[14]

Requiring employers to use E-Verify will undermine job growth.

- Federal Reserve officials stated in December 2010 that progress toward cutting unemployment remained "disappointingly slow"[15] and that "it would take four to five more years for the job market to normalize fully."[16]
- Government regulation is a primary barrier to job growth. According to Tom Donohue, president and CEO of the U.S. Chamber of Commerce, businesses are already struggling with a "tsunami" of regulations that are "depriving our economic system of the needed oxygen to grow and expand."[17]
- Businesses need to hire U.S. workers to grow the economy. If businesses are forced to divert scarce resources to implementing and maintaining E-Verify, it will take away from their ability to create new jobs and revenue.
- In Arizona, where employers are required to use E-Verify, small business owner Mike Castillo states that "the program isn't user-friendly for small-business owners." He recently tried to hire a part-time worker, but a technical glitch that took days to fix made it difficult. "If you don't have the luxury of a human-resources staff, E-Verify takes time away from your core business," he said.[18]

Requiring employers to use E-Verify will place burdens on all businesses, especially small businesses.

- The majority of businesses in the U.S. do not participate in E-Verify. As of January 2011, slightly more than 243,000 employers were enrolled in E-Verify[19] — representing only slightly more than 3 percent of the approximately 7 million employers in the U.S.
- Employers enrolled in E-Verify are not representative of all U.S. employers. Although 73 percent of businesses in the U.S. have fewer than 10 employees, only 12 percent of E-Verify users are small businesses.[20] Many farms and other small businesses, for example, do not have high-speed Internet access, which is needed for E-Verify.[21]

- According to data compiled by Bloomberg, if use of E-Verify were mandatory it would have cost small businesses $2.6 billion in fiscal year 2010. Bloomberg estimates that E-Verify cost small businesses currently enrolled in the program $81 million in fiscal year 2010.[22]
- One small business in Maryland has estimated that it would cost approximately $27,000 for the company to use E-Verify for one year,[23] thereby handicapping the owner's ability to hire new workers.
- In Arizona, where use of E-Verify is mandatory, the "concern most frequently identified" is that notices of database error are "issued on work-authorized individuals," the U.S. Citizenship and Immigration Services Ombudsman found when it interviewed a variety of employers there.[24]

■ Requiring the use of E-Verify will decimate the agricultural industry.

- Between 50 and 75 percent of the U.S. agricultural labor force is comprised of unauthorized workers.[25] If these workers left the industry, it would increase production costs and prices and result in the mass off-shoring of millions of U.S. jobs.
- In speaking out against a bill in Florida to make use of E-Verify mandatory, farm owner Rick Roth said that he can't get legal residents to harvest his crops and that the policy proposal will bankrupt farmers.[26]
- The U.S. Department of Agriculture reports that for every on-farm job there are about 3.1 "upstream" and "downstream" jobs in America—jobs that support and are created by the growing of agricultural products.[27]
- The vast majority of these complementary jobs are held by U.S. workers, who would also face unemployment if on-farm jobs are eliminated or moved out of the country. In other words, for each undocumented farm worker we deport, we are essentially deporting the jobs of three American workers.

■ Requiring the use of E-Verify will undercut economic recovery.

- According to the Congressional Budget Office (CBO), making use of E-Verify mandatory (without also providing a way for unauthorized workers to become work-authorized) would increase the number of employers and workers who resort to the black market, outside of the tax system. This would decrease federal revenue by more than $17.3 billion over ten years.[28]
- The *Arizona Republic* reported that a 2008 state law requiring businesses to use E-Verify has resulted in workers and businesses moving off the books into the cash economy.[29] This shift is depriving the state of income-tax revenue at the same time the state is facing a $3 billion budget gap.
- Apart from lost tax revenues, the CBO estimates that implementing a requirement that employers use E-Verify would cost $3 billion over 5 years and $6.1 billion over 10 years.[30]
- Imposing these costs on the federal government would be particularly unwise now as our economy struggles with a projected $1.34 trillion deficit for 2011.[31]

Unless the current unauthorized workforce is provided a path to legalization, requiring the use of E-Verify is doomed to fail.

- Undocumented workers are not going to leave the country because Congress makes it harder for them to work here. Rather, they and their employers will simply find a way around E-Verify by not following program rules, seeking out more sophisticated fraudulent documents, or moving into the underground economy—a prospect that has serious consequences for tax revenues at the federal, state, and local levels.[32]
- This reality will create unfair competition for high-road employers, who follow program rules, and who will be pitted against low-road employers who choose to ignore system rules. When some employers are not complying with E-Verify rules and hiring undocumented workers, it undermines the whole system's purpose, which is to ensure a legal workforce.
- By refusing to deal with the undocumented workforce practically by putting them on a path to earning legal immigration status, any proposal to make use of E-Verify mandatory ignores the critical place undocumented workers fill in the U.S. economy.

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[1] For more information about E-Verify, see *Facts About E-Verify* (will be available on NILC's website, www.nilc.org, in late winter, 2011).

[2] Letter to U.S. House of Representatives Democratic colleagues from Lamar Smith, Feb. 4, 2010.

[3] *Immigration and Native-Born Unemployment Across Racial/Ethnic Groups: Untying the Knot, Part II of II* (Immigration Policy Center, Rob Paral and Associates, May 2009), www.immigrationpolicy.org/sites/default/files/docs/Part%202%20-%20Unemployment%20Race%20Disconnect%2005-19-09.pdf, pp. 3–5.

[4] Letter to Rep. John Conyers, Chair, Committee on the Judiciary, U.S. House of Representatives, from Peter Orszag, Director, Congressional Budget Office, Apr. 4, 2008, www.cbo.gov/ftpdocs/91xx/doc9100/hr4088ltr.pdf. See also *What Immigration Reform Could Mean for the U.S. Economy* (Immigration Policy Center, Apr. 2009), www.immigrationpolicy.org/just-facts/what-immigration-reform-could-mean-us-economy.

[5] *Findings of the Web-Based E-Verify Program Evaluation* (Westat, Dec. 2009), www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf, p. 118.

[6] Jahna Berry, "Most Arizona Employers Aren't Using E-Verify," *The Arizona Republic*, July 28, 2010, www.azcentral.com/arizonarepublic/news/articles/2010/07/28/20100728arizona-employers-ignoring-e-verify.html.

[7] Richard M. Stana, *Report to the Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives: Employment Verification, Federal Agencies Have Taken Steps to Improve E-Verify, but Significant Challenges Remain* (Government Accountability Office, Dec. 2010, GAO-11-146), www.gao.gov/new.items/d11146.pdf, p. 22.

[8] For more examples of U.S. citizens and lawful immigrants affected by E-Verify, see *How Errors in E-Verify Databases Impact U.S. Citizens and Lawfully Present Immigrants* (NILC, March 2010), www.nilc.org/immsemplymnt/ircaempverif/e-verify-errors-and-USCs-2010-03-03.pdf.

[9] Caroline Isaacs, *Sanctioning Arizona: The Hidden Impacts of Arizona's Employer Sanctions Law* (American Friends Service Committee, 2009), www.afsc.org/tucson/ht/a/GetDocumentAction/i/74700.

[10] About 0.8 percent of workers receive an *erroneous* tentative nonconfirmation, or "TNC." Westat, *supra* note 5, p. 117. There are currently about 154,287,000 million workers in the U.S. The 1.2 million figure was arrived at by multiplying these two numbers.

[11] Approximately 0.5 percent of work-authorized individuals receive a final nonconfirmation in error. (0.8 percent receive an *erroneous* TNC, and 0.3 percent are able to correct their TNC. This results in 0.5 percent of individuals receiving an erroneous TNC that could not be corrected and therefore became an erroneous final nonconfirmation.) There are currently 154,287,000 million workers in the U.S. The 771,435 figure was arrived at by multiplying 154,287,000 million by the 0.5 erroneous final nonconfirmation rate.

[12] There were approximately 16 million E-Verify queries in fiscal year 2010. See *E-Verify Gets High Marks from Employers in Customer Satisfaction Survey* (U.S. Citizenship and Immigration Services, Jan. 18, 2011), www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=a6adb46adba9d210VgnVCM100000082ca60aRCRD&vgnextchannel=a2dd6d26d17df110VgnVCM1000004718190aRCRD. Approximately 0.5 percent of work-authorized individuals receive a final nonconfirmation in error. See note 11, *supra*. The 80,000 figure was arrived at by multiplying these two numbers.

[13] A large multinational employer reported that 15 percent of the queries it submitted to E-Verify resulted in erroneous findings. See *Comments on Proposed Rule Published at 73 Fed. Reg. 33374 (June 12, 2008)* (American Council on International Personnel, Aug. 11, 2008). Queries submitted to E-Verify by Intel Corporation in 2008 resulted in approximately 12 percent of all workers being initially flagged as unauthorized for employment. All of these workers were cleared by E-Verify as *work-authorized*, but only after "significant investment of time and money" and "lost productivity." See *Comments on Proposed Employment Eligibility Regulations Implementing Executive Order 12989 (as amended)* (Intel Corporation, Aug. 8, 2008).

[14] Marc Rosenblum, *E-Verify: Strengths, Weaknesses, and Proposals for Reform* (Migration Policy Institute, Feb. 2011), www.migrationpolicy.org/pubs/E-Verify-Insight.pdf, p. 7. (This endnote and its accompanying text were updated on May 13, 2011.)

[15] Courtney Schlisserman, "Employers in 2010 Announced Fewest U.S. Job Cuts in 13 Years," *Bloomberg*, Jan 5, 2011, www.bloomberg.com/news/2011-01-05/employers-in-2010-announced-fewest-u-s-job-cuts-in-13-years.html, emphasis added.

[16] Scott Lanman, "Bernanke Sees Slow Drop in Unemployment Amid Recovery," *Bloomberg*, Jan. 7, 2011, www.bloomberg.com/news/2011-01-07/bernanke-sees-slow-drop-in-joblessness-even-with-growth-pickup.html, emphasis added.

[17] Thomas Donohue, *The Regulatory Tsunami: How a Tidal Wave of Regulations Is Drowning America* (U.S. Chamber of Commerce, Oct. 7, 2010), www.uschamber.com/press/speeches/2010/regulatory-tsunami-how-tidal-wave-regulations-drowning-america, emphasis added.

[18] See Berry, *supra* note 6, emphasis added.

[19] *E-Verify Gets High Marks*, *supra* note 12.

[20] Westat, *supra* note 5, p. 64.

[21] "U.S. Pays the Price for Absence of National Immigration Law," INQUIRER.NET, Apr. 10, 2008, http://globalnation.inquirer.net/news/news/view/20080410-129490/US-Pays-the-Price-for-Absence-of-National-Immigration-Law.

[22] Jason Arvello, "'Free' E-Verify May Cost Small Businesses $2.6 billion: Insight," *Bloomberg*, Jan. 28, 2011.

[23] *Chamber of Commerce of the USA v. Chertoff*, No. 08-CV-3444-AW (D.Md.).

[24] *Observations on the E-Verify Experience in Arizona and Recommended Customer Service Enhancements* (U.S. Dept. of Homeland Security Office of the Citizenship and Immigration Services Ombudsman, Dec. 22, 2008), www.dhs.gov/xlibrary/assets/cisomb_everify_recommendation_2008-12-22.pdf, emphasis added.

[25] Dan Zak, "Stephen Colbert, in GOP Pundit Character, Testifies on Immigration in D.C.," *The Washington Post*, Sept. 25, 2010, www.washingtonpost.com/wp-dyn/content/article/2010/09/24/AR2010092402734.html.

[26] John Lantigua, "Big Foes Await Gun, E-Verify Bills," *The Palm Beach Post*, Jan. 22, 2011, www.palmbeachpost.com/news/big-foes-await-gun-e-verify-bills-1203265.html.

[27] Dan Griswold, *ICE Worksite Enforcement – Up to the Job?: Testimony Before the Subcommittee on Immigration Policy and Enforcement, Committee on the Judiciary, U.S. House of Representatives* (Cato Institute, Jan. 26, 2011), www.cato.org/pub_display.php?pub_id=12730.

[28] See Congressional Budget Office, *supra* note 4.

[29] Daniel Gonzalez, "Illegal Workers Manage to Skirt Arizona Employer-Sanctions Law: Borrowed Identities, Cash Pay Fuel an Underground Economy," *The Arizona Republic*, Nov. 30, 2008.

[30] Congressional Budget Office Cost Estimate: SenateAmendment 1150 to S. 1348, the Comprehensive Immigration Reform Act of 2007, www.cbo.gov/ftpdocs/81xx/doc8179/SA1150_June4.pdf, pp. 31, 33.

[31] Lanman, *supra* note 16.

[32] See Immigration Policy Center, *supra* note 4.