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Workplace Enforcement to Combat Illegal Migration: Sensible Strategy and Practical Options

James Jay Carafano, Ph.D.

The U.S. economy includes a significant number of unlawfully present workers who are undocumented and unaccounted for. Research by the Government Accountability Office (GAO) indicates an alarming degree of collaboration on the part of employers in hiring illegal workers.¹ This excessive acceptance of a shadow workforce encourages illegal border crossings, encourages other companies to break the law, and forces states and local communities to subsidize cheap, illegal labor by bearing social costs such as uncompensated emergency room care, education, and social services.

Both the House and the Senate have proposed legislation for strengthening workplace enforcement. Both envision using the Basic Pilot program, created in 1996 under the Illegal Immigration Reform and Immigrant Responsibility Act, as a principal tool for denying unlawfully present workers employment.² This approach fails on a three counts:

- It is unlikely that Basic Pilot will prove to be an effective tool;
- The implementation of the program will place excessive and unnecessary burdens on the U.S. economy; and
- There are practical and more effective means to enhance workplace enforcement.

I propose an enforcement strategy that could be implemented without creating more government and a huge and expensive information technology program. This strategy could be implemented by revising the U.S. tax code to facilitate cooperation between federal

Talking Points

- The Basic Pilot program cannot identify imposters or stop unauthorized workers from creating false documentation, nor can it hinder employers from illegally hiring unauthorized workers.
- The right strategy to stop illegal workers would give DHS the resources and authority to target large-scale employers in the sectors of the economy where undocumented workers are most present (e.g., agriculture, services industries, and construction).
- The Social Security Administration and the Internal Revenue Service should have to share information, such as to Social Security number mismatches or identity thefts, with the Department of Homeland Security.
- Additionally, any temporary worker program should serve to strengthen, rather than undermine, the value of citizenship and the health of civil society.

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214 Massachusetts Avenue, NE
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(202) 546-4400 • heritage.org

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agencies in enforcing the law. I propose amending the tax code in a way that will protect privacy rights and still allow the Department of Homeland Security (DHS), with the cooperation of the Social Security Administration (SSA) and Internal Revenue Service (IRS), to find those large employers who intentionally violate the law by hiring illegal workers and giving the government incorrect information.

What's Wrong with the Basic Pilot Program?

The Basic Pilot program was created in 1996 as a part of the Illegal Immigration Reform and Immigrant Responsibility Act—along with the Citizen Attestation Verification Pilot, and the Machine Readable Document Pilot—with the purpose of electronically verifying the employment legitimacy of newly hired employees. One year later it was implemented in the five states with the largest immigrant populations (California, Florida, Illinois, New York, and Texas) in order to test its ability at detecting false claims to U.S. citizenship, fraudulent documents, and stolen identities.³

Basic Pilot requires employers to send the work information of all newly hired employees to the Social Security Administration and to the then Immigration and Naturalization Service for work authorization. For each newly hired worker, the employer must first tap, via computer, into the SSA database to verify the worker's Social Security number. If the number matches the information in the SSA records, the worker is a U.S. citizen and no further action is required. If the worker has immigrant status, the employer must use the DHS database for further information, and if that information matches the DHS records, the employee may continue to

work. In the case that the employer's information for the new employee does not match SSA or DHS records, the employer is responsible for giving the employee written notice of that fact. If the worker does not contest his non-confirmation status with SSA or DHS, the notice becomes final and the employer is required to fire the worker.⁴

In June of 2002, at Congress's request, the Institute for Survey Research at Temple University and Westat evaluated Basic Pilot's competency from the three perspectives of employers, employees, and federal agencies. In evaluating Basic Pilot's ability to reduce fraudulent claims, the evaluation team concluded that about 10 percent of cases submitted to Basic Pilot were undocumented workers, not including those who were deterred from applying to Basic Pilot employers by the risk of getting caught. They also discovered that most employers engaged in prohibited practices. For example, 73 percent of employees who should have been informed of work authorization problems never received notice of non-confirmation from their employers.⁵

Essentially, Basic Pilot could not and cannot identify imposters or stop unauthorized workers from creating false documentation, nor can it hinder employers from illegally hiring unauthorized workers.

The evaluation team also found that Basic Pilot does not protect against privacy violations. According to the 2002 report, the current design of the system does not prevent employers from illegally accessing employee information. The cost of the program has also become a burden for many employers, who cannot afford the \$500 annual cost for operating the program. Those expenses do not include the approximately \$10 million the federal government spent to set up the Basic Pilot program.⁶

1. U.S. Government Accountability Office, "Immigration Enforcement: Benefits and Limitations to Using Earnings Data to Identify Unauthorized Work," July 11, 2006, at www.gao.gov/new.items/d06814r.pdf (July 17, 2006).
2. Institute for Survey Research at Temple University and Westat, "INS Basic Pilot Evaluation Summary Report," January 29, 2002, pp. v–vii at www.uscis.gov/graphics/aboutus/repstudies/piloteval/INSBASIC_summ.pdf (July 17, 2006).
3. *Ibid.*, pp. 1–5.
4. *Ibid.*
5. National Immigration Law Center, "Basic Information Brief: DHS Basic Pilot Program," December 2003, p. 4, at www.nilc.org/immseplymnt/IWR_Material/Attorney/BIB_Pilot_Programs.pdf (July 17, 2006).
6. Institute for Survey Research, *INS Basic Pilot Evaluation Summary Report*, pp. 1–5.

Although Basic Pilot is “potentially a valid concept,” it cannot be implemented on a large scale.⁷ As a volunteer program, Basic Pilot already has some constraints. Building the infrastructure for a government electronic information system to handle millions of transactions itself is costly enough. The necessary training, insurance for loss or leakage of data, oversight, and redress would cost millions more and take years to implement. Additionally, Basic Pilot does not address the principal means illegal workers use to get jobs. There are many ways an undocumented worker can get around the issue of work authorization.⁸ These include:

- using fraudulent documents;
- using information that belongs to another, thereby committing identity theft; and
- being hired by an employer who does not follow the law.

Basic Pilot did not prove efficient at eliminating any of these. Basic Pilot cannot stop undocumented workers from falsifying information or using someone else’s information, thereby disallowing those legitimate workers whose information was stolen the authorization to work.

Furthermore, trying to enforce and make mandatory a worker verification system to ensure that every unlawfully present individual is denied a job would unnecessarily hamper American business and the U.S. economy. To work lawfully in the United States, those who are not U.S. citizens must receive DHS authorization. A national-level Basic Pilot program would question the legitimacy of documented workers’ right to work. Even a small percentage of stolen identities would negatively affect millions of Americans with a legitimate right to work, which could result in a dramatic loss of billions of dollars in industrial productivity.⁹

Additionally, building a government information system to handle transactions could fall prey to a plethora of problems—technological failures, violation of privacy rights, and leaked information are just some among the many costs taxpayers would have to bear.¹⁰

For all its other shortfalls, Basic Pilot fails most because it represents a bad strategy. It is:

- *Unnecessary.* Undocumented workers are not distributed uniformly throughout the economy. They are concentrated in a few sectors, including construction, agriculture, and some service industries. Saddling the entire economy with the costs of electronic verification makes no sense.
- *Inefficient.* Given the often inaccurate and outdated data in SSA records, as well as limited technology, chances are that a small percentage of false records would affect millions of Americans who have a legitimate right to work. This would also cause an unacceptable loss of productivity totaling in the billions of dollars.
- *Intrusive.* The program would run afoul of legitimate privacy concerns. Both the government and employers would have access to massive databases of information, which would surely tempt some to traffic in identity theft.
- *Costly.* An electronic verification of every single U.S. worker would end up costing a lot. Not only would the infrastructure of building a technology system that could handle millions of transactions be expensive, but providing training, insurance, oversight, and redress would take years to implement and be incredibly expensive. In the event of lost or leaked data, more unwanted privacy issues would occur.

7. *Ibid.*, p. vii.

8. U.S. Government Accountability Office, “Immigration Enforcement: Benefits and Limitations to Using Earnings Data,” p. 1.

9. James Jay Carafano, Ph.D., “Immigration Enforcement and Workplace Verification: Sensible Proposals for Congress,” Heritage Foundation *Executive Memorandum* No. 999, April 4, 2006, p. 2, at www.heritage.org/Research/Immigration/em999.cfm.

10. *Ibid.*

What Is the Right Strategy?

The right strategy would give DHS the resources and authority to target large-scale employers in the sectors of the economy where undocumented workers are most present (e.g., agriculture, services industries, and construction). It would provide a complement of incentives and enforcement measures to wean employers from the shadow workforce. And it would be a set of tools that could be implemented quickly, so that in conjunction with increased border enforcement and legal alternatives for South–North migration, the government can redress the balance between the attractiveness of legal and illegal entry into the United States now—not years from now.

The Department of Homeland Security has already taken a step in the right direction. In an effort to strengthen immigration enforcement, DHS recently expanded its worksite enforcement efforts. In April 2006, DHS announced an interior enforcement strategy that comprises increased efforts to target employers who hire unauthorized workers and immigration violators and who tap into criminal networks of illegal immigration. DHS has been bringing criminal charges against these offenders, rather than relying on administrative fines. The GAO reports that DHS has increased its numbers of worksite enforcement arrests from 160 in 2004 to 176 in 2005, and its numbers of criminal convictions from 87 to 160 over the same period. DHS plans on expanding worksite enforcement manpower by 206 positions in 2007.¹¹

In addition to these recent initiatives, past efforts at targeted workplace enforcement have proven effective as well. The lesson is clear. Targeted workplace enforcement works and it does not require millions of dollars of new technology, more intrusive government, or expensive new programs to make it happen.

What Has to Change?

Congress can help by giving DHS the tools it needs to gain effective interagency cooperation

with the SSA and the IRS. The top priority here must be addressing the prohibition against sharing Social Security mismatch data. Currently, Section 6103 of the Internal Revenue Code does not allow the IRS to release any taxpayer information, even to other government agencies for purposes of workplace verification. According to the GAO report and the Temple University evaluation, approximately 10 percent of Social Security numbers submitted by employers do not match SSA master records.¹² Ten percent amounts to nearly *nine million* workers. Granted, some mismatches are innocuous and result from misspelling, but most have no other explanation than an employer's attempt to avoid the law and hire undocumented workers.

The SSA and the IRS should have to share information, such as relates to Social Security number mismatches or identity thefts, with the Department of Homeland Security. DHS has the authority to take action not only against employers, but against illegal immigrants. If DHS is given access to SSA and IRS information on cases of mismatched or stolen Social Security numbers, DHS could better fulfill its immigration law enforcement. Within a few years, DHS could feasibly target one-third of the illegal workforce—close to *five million* unauthorized workers.

In order to make the most efficient use of Social Security mismatch information, DHS should focus its enforcement efforts on worst offenders and abusers of that system. The most practical way of dealing with fraud would be to identify the employers who abuse the system in order to hire illegitimate workers. While it may not be possible to track all of the employers who turn a blind eye to the law, the worst violators could easily be caught using the information they release to SSA. Those who, according to GAO, give at least 10 new employees the same Social Security number throughout a year obviously are in collusion with their illegal workers and should be prosecuted for non-compliance with the law.¹³

11. U.S. Government Accountability Office, "Immigration Enforcement: Benefits and Limitations to Using Earnings Data," p. 4.

12. Carafano, "Immigration Enforcement and Workplace Verification," p. 2.

Employers must also respond to the mismatch letters from SSA when their employees' information does not match master records. Most mismatches are probably harmless, due to misspellings or name changes, but some mismatches are intended to hide the employment of undocumented workers. Employers who do not respond to SSA's non-confirmation letters could be easily tracked. I believe cracking down on the worst abusers of the system is the most efficient way of tracking fraud and punishing it.

As part of the worksite enforcement effort, Basic Pilot should continue to operate and should remain a small-scale, voluntary program. To render it more useful for enforcement purposes, DHS should have the authority to randomly investigate and audit employers who participate in the program. (DHS does not currently have access to Basic Pilot participant information.) Additionally, to make the program more cost-efficient and to alleviate the financial burden on employers, Basic Pilot could utilize a protected Web-based system for information submission. Basic Pilot offers one more tool for DHS to employ in its efforts to enforce immigration policies.

One additional enforcement measure would be to strengthen the tax code to restrict the ability of employers to file the wages of illegal workers as tax-deductible. As part of targeted enforcement, Congress should amend the tax code to remove the tax-deductibility of wages paid to unauthorized aliens. This would further strengthen the hand of DHS in securing the cooperation of American businesses by creating the right incentives for employers to hire through the legal channels.¹⁴

Increasing civil penalties for intentionally hiring illegal workers should also be considered.

Additionally, DHS should be able to establish "safe harbor" information-sharing systems and other incentives to work with employers who are actively seeking to reduce their reliance on undocumented workers.

To address privacy concerns, DHS should assess the extent of information sharing it needs from the SSA and the IRS, and establish how the information will be utilized to conduct workplace enforcement. DHS also should develop safeguards to protect taxpayer information against misuse.

Immigration Reform Is Also Required

Strengthening enforcement of employer hiring practices is only one component of what should be a comprehensive approach. Better border security is also necessary. But just as important, legal opportunities for migration have to be provided to give incentive to individuals not to cross the border illegally and to encourage employers to find legitimate workers. This could include the creation of a temporary worker program to meet the needs of the American economy. Some undocumented workers are in America temporarily with the plan of increasing their monetary assets and then returning home. A temporary worker program would create the correct incentives for these immigrants to apply for temporary documentation to work legally in the U.S.

The job market should determine the allocation of temporary guest workers, not the government. However, if employers go to great lengths to hide some of their illegal employees and give SSA false Social Security numbers, the odds are that their business does depend on these immigrant workers, and the demand will be relatively high. I believe the law should also require compliance bonds for employers. Compliance bonds would mandate that employers arrange for transportation and the room and board of guest workers, which adds to the employer's expenses if the guest workers were to overstay their visas. Over time, this should create incentives for employers to ensure their guest workers leave the U.S. at the end of their 10-month visa term.

Any temporary worker program should serve to strengthen, rather than undermine, the value of citizenship and the health of civil society. In addition, it must meet minimum security concerns,

13. U.S. Government Accountability Office, "Immigration Enforcement: Benefits and Limitations to Using Earnings Data," p. 4.

14. Carafano, "Immigration Enforcement and Workplace Verification," p. 2.

including appropriate security, criminal, and health screening measures before individuals enter the United States. No temporary worker program should include amnesty. Individuals should have to return to their place of origin to apply to enter the United States legally. This is an essential deterrent to future illegal border crossing and unlawful presence.¹⁵

—James Jay Carafano, Ph.D., is Senior Research Fellow for National Security and Homeland Security in the Douglas and Sarah Allison Center for Foreign Policy Studies, a division of the Kathryn and Shelby Cullom Davis Institute for International Studies, at The Heritage Foundation. This testimony was submitted to the House Government Reform Committee's Subcommittee on Regulatory Affairs.

15. James Jay Carafano, Ph.D., "The Spanish Trap: More Evidence on Pitfalls of Senate Immigration Amnesty Proposal," Heritage Foundation *WebMemo* No. 1106, June 5, 2006, at www.heritage.org/Research/Immigration/wm1106.cfm.