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Congress Should Act on Social Security “No Match” Sharing for Immigration Enforcement

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This week, Charles R. Breyer, a federal judge for the Northern District of California, issued a ruling in San Francisco indefinitely delaying efforts by the Department of Homeland Security (DHS) and Social Security Administration (SSA) to issue guidance to employers and employees on how to resolve Social Security “no-match” data. The Administration intended the guidance to strengthen workplace enforcement, making it more difficult for persons unlawfully present in the United States to illegally obtain work. In addition, the guidelines would have helped U.S. persons ensure that they were not wrongly denied benefits or were victims of identity theft.

Ensuring the credibility of workplace immigration enforcement and SSA administrative practices is important. Rather than wait for the resolution of a protracted court battle to resolve the issue, Congress should cut the Gordian knot and demonstrate that it is serious about enforcing immigration laws, protecting the integrity of the Social Security system, and safeguarding the rights of U.S. persons. Congress should craft legislation that specifically authorizes SSA to routinely share no-match data directly with DHS.

Why No-Match Matters. SSA mails notices when employers hire new workers whose personal information (e.g., name and Social Security number) does not match that in SSA records. DHS and SSA planned to send employers detailed guidance on their legal obligations and the steps that they should take in response to a no-match. In 2005,

SSA mailed out about 10.5 million no-match letters, and by some estimates, upwards of 90 percent of those concerned workers who were not legally entitled to be in the United States.

If DHS had adequate access to SSA no-match data and data on stolen Social Security numbers, the department could do its job better. Within a few years, DHS could feasibly target one-third of the illegal workforce—close to *five million* unauthorized workers.

The Right Strategy. For starters, the Administration should press its legal authority to issue the new guidance letters. DHS has made a strong case that the new guidance is legitimate and practical; indeed, it will create important benefits for both employers and employees, such as ensuring that family members are not wrongly denied death benefits because of administrative errors that might have occurred in the initial information supplied by an employer to SSA.

The Administration should also press for additional authorities. Proponents of enforcement acknowledge that merely issuing clear no-match guidance is not the optimum enforcement tool. A far better policy would be for the SSA to routinely

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share no-match data directly with DHS. This can be done in a manner that does not put individual employees' sensitive information or civil liberties at risk. With this data, DHS could more efficiently target employers that willfully hire unlawfully present labor. Allowing the sharing of no-match data and giving 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) would provide incentives and enforcement measures to wean employers from the shadow workforce. These steps also comprise a set of tools that could be implemented quickly; in conjunction with increased border enforcement and legal alternatives for South–North migration, these tools would allow the government to redress the balance

between the attractiveness of legal and illegal entry into the United States now—not years in the future.

There is a dispute, even within the Administration, over whether DHS may automatically receive no-match data under existing law. Congress should pass legislation specifically authorizing SSA/DHS information sharing. This would demonstrate that Congress is serious about seeing laws enforced and show its support for the Administration's efforts to do so.

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