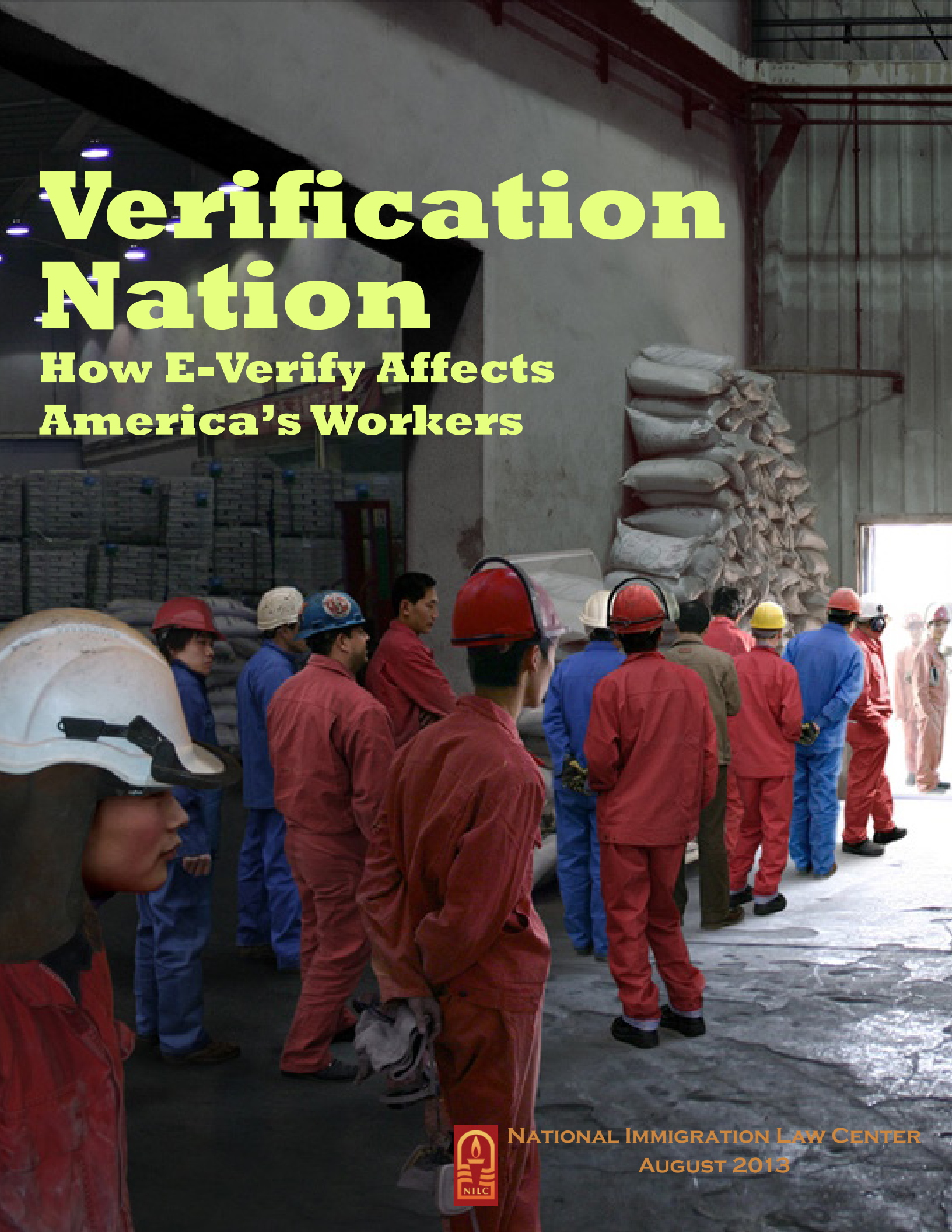


Verification Nation

How E-Verify Affects America's Workers

National Immigration Law Center
August 2013

THE NATIONAL IMMIGRATION LAW CENTER is a nonpartisan organization dedicated to defending and advancing the rights of low-income immigrants and their families. We conduct policy analysis, advocacy, and impact litigation, as well as provide training, publications, and technical assistance for a broad range of groups throughout the United States.

Since its inception in 1979, NILC has earned a national reputation as a leading expert on the intersection of immigration law and the employment rights of low-income immigrants. NILC's extensive knowledge of the complex interplay between immigrants' immigration status and their rights under U.S. employment and labor laws is an important resource for immigrants' rights coalitions, and faith and community-based organizations, as well as policymakers, legal aid attorneys, workers' rights advocates, labor unions, government agencies, and the media.

NILC has analyzed and advocated for improvements to the E-Verify program since it was first implemented in 1997 as the Basic Pilot program. NILC has extensive experience helping advocates and attorneys respond to problems with the program as it affects workers, noncitizen and U.S.-citizen alike. Throughout the years, we have worked closely with the U.S. Department of Homeland Security (DHS), the Social Security Administration (SSA), and the U.S. Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) on issues related to E-Verify and its adverse impact on workers.

Verification Nation: How E-Verify Affects America's Workers

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Made in the United States of America

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A NOTE ON SOURCES

In writing this report, we have attempted to use the most recent relevant data available. Much of this document relies on independent evaluations of the E-Verify program conducted by the research company Westat, including *Evaluation of the Accuracy of E-Verify Findings* (which in this report we refer to as "Westat 2012")[1] and *Findings of the E-Verify Program Evaluation* (which we refer to as "Westat 2009").[2]

Evaluation of the Accuracy of E-Verify Findings (or Westat 2012) was not released to the public until July 2013. Though it is the most recent independent evaluation of E-Verify, it relies primarily on data gleaned during fiscal years 2009 and 2010. In addition, its utility is limited because it does not reevaluate and update key findings from *Findings of the E-Verify Program Evaluation* (or Westat 2009), nor does it examine many issues surrounding E-Verify's impacts on low-wage workers. As needed, we have relied on other sources, including media reports, government documents, and first-hand accounts of worker experiences with E-Verify.

Finally, the sources of the six stories highlighted in this report—from Minnesota, Ohio, Texas, California (two stories), and New Jersey—are provided immediately before the numbered endnotes.

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[1] *Evaluation of the Accuracy of E-Verify Findings* (Westat, July 2012), www.uscis.gov/USCIS/Verification/E-Verify/E-Verify_Native_Documents/Everify%20Studies/Evaluation%20of%20the%20Accuracy%20of%20EVerify%20Findings.pdf. Though dated July 2012, this report was not released to the public until July 2013.

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

As part of the current national dialogue about reforming our country's immigration laws, legislators in both the Senate and the House of Representatives have proposed a national mandate to require all employers to use E-Verify—an electronic employment eligibility verification system—to check their workers' eligibility to be employed in the United States. In the midst of these discussions, U.S. Citizenship and Immigration Services (USCIS) released to the public a study narrowly focused on the E-Verify program's accuracy rates.[1] In the present report, we analyze the findings of this USCIS-commissioned study and examine, more broadly, the adverse impacts on workers that would result from a national E-Verify mandate. We hope this report will deepen your understanding and provide new insights into how E-Verify impacts America's low-wage workforce.

E-Verify's History and Growth

E-Verify is an Internet-based system that allows employers to electronically verify the work authorization of their employees.

Previously known as the Basic Pilot, E-Verify was initially authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.[2] Congress has reauthorized the program several times, and it is currently authorized through September 2015.[3] Since the early 2000s, its use has grown substantially.[4] E-Verify is primarily a voluntary program, though laws have been enacted in 20 states mandating that it be used by at least some in-state employers, and certain federal contractors are also required to use the program.[5] In 2012, the most current year for which data is available, 404,295 employers,[6] or only about 7 percent of U.S. employers,[7] were enrolled in E-Verify.

Several proposals to make E-Verify a permanent and mandatory verification system for all employers have been considered in Congress.[8] In June 2013, the Senate passed an immigration reform bill, the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 (S. 744), with provisions that would require all U.S. employers to use a mandatory electronic employment eligibility verification system (EEVS) modeled after E-Verify. The EEVS would be phased in over four years according to employer size.[9] S. 744's EEVS provisions also include significant due process and worker protections—protections that do not exist in the current E-Verify program—for employment-authorized workers who are affected by an E-Verify system error.[10] In the House of Representatives, the Legal Workforce Act (H.R. 1772) passed the House Judiciary Committee in June 2013 and is awaiting consideration on the floor.[11] The Legal Workforce Act would also require every employer in the U.S. to use an EEVS, but the mandate would be phased in over

only two years.[12] The House bill does not include the due process protections that the Senate bill does.[13]

How the System Works

E-Verify supplements the I-9 employment eligibility verification process.

After registering for the E-Verify program, signing a memorandum of understanding (MOU) with USCIS, and completing online training, participating employers must verify the employment eligibility of every newly hired employee via E-Verify.[14]

Within three days of hiring a worker, an E-Verify employer must submit the biographical information a worker provides on the I-9 Employment Eligibility Verification form, including name, date of birth, Social Security number, and citizenship status, into an electronic form on a secure website.[15] This information is checked against a Social Security Administration (SSA) database, and then, for non–U.S. citizens and some naturalized citizens, against U.S. Department of Homeland Security (DHS) databases.[16] The system returns either an immediate confirmation of employment authorization or a tentative nonconfirmation (TNC).

If the system confirms that the worker is employment-authorized, the worker typically remains employed and may not even be aware that the employer used E-Verify.[17] However, if the system issues a TNC for the worker, the worker must challenge it within eight business days or risk being fired. To challenge—or "contest"—a TNC, the worker must contact the appropriate federal agency, usually SSA, and often must visit the agency in person. In a small percentage of cases, E-Verify returns TNCs for U.S. citizens and work-authorized noncitizens.[18]

If a worker fails to act on a TNC within eight days, or if USCIS or SSA are unable to confirm that the worker is work-authorized, the system issues a final nonconfirmation notice (FNC) to the employer.[19] At that point, the employer must either terminate the worker's employment or risk being penalized for knowingly continuing to employ an unauthorized worker.[20] In a small percentage of cases, E-Verify issues an FNC for a U.S. citizen or work-authorized noncitizen. In other words, E-Verify may make an error that labels a worker *unauthorized* to be employed despite the fact that he or she *is a U.S. citizen or is otherwise employment-eligible*. When such errors occur, they can result in a U.S. citizen or work-authorized noncitizen worker losing his or her job.

These errors are potentially amplified because the E-Verify process relies upon employers to give the worker the E-Verify–generated TNC notice and "SSA referral letter," the documents that, respectively, explain that a TNC has been issued for the worker and provide information about how to correct it.[21] If a U.S. citizen or work-authorized noncitizen worker does not know he or she has been issued a TNC—because the employer benignly, recklessly, or maliciously has failed to follow the prescribed procedure—the worker would have little ability to challenge it within the eight-business-day period.[22]

E-Verify Errors

Despite an improved accuracy rate for some, E-Verify continues to threaten the jobs of U.S. citizens.

Westat 2012 makes key findings on two important metrics for measuring the program's accuracy: the erroneous-TNC rate and the FNC-accuracy rate. The erroneous-TNC rate indicates how many U.S. citizens or work-authorized noncitizens receive a TNC before being deemed authorized to work, whereas the FNC accuracy rate indicates how often FNCs are issued to unauthorized workers (as opposed to being issued in error to U.S. citizen or authorized noncitizen workers).[23] These numbers have real-world significance for low-wage workers. Workers receiving a TNC in error experience extra burdens and potential mistreatment on the job. And workers receiving an FNC in error likely lose their jobs—often with little recourse.

According to Westat 2012, the overall TNC error rate is 0.3 percent and the erroneous TNC rate for U.S. citizens is 0.2 percent.[24] And although it is laudable that DHS has lowered this error rate, errors continue to be made. If, as prescribed by the Legal Workforce Act, the federal government were to require that E-Verify be used for all newly hired workers, it would mean that a total of approximately 150,000 to 500,000 citizens, LPRs, and work-authorized noncitizens would have to either contact a government agency to get their records corrected or face losing their jobs.[25] That is the numerical equivalent of the entire population of Green Bay, Wisconsin (on the low end of the estimated range), or of Tucson, Arizona (on the high end), facing losing their jobs because of an E-Verify system error.[26]

Minnesota

A naturalized U.S. citizen was fired after her employer received an erroneous FNC for the worker. E-Verify first issued a TNC because Social Security records still showed the worker was a lawful permanent resident (LPR), not a U.S. citizen, even though she had become a citizen nearly 20 years prior. Even though the worker contested the TNC and visited her local SSA office with proof of her citizenship status within eight federal work days, the SSA office failed to update the E-Verify system to reflect that the worker had presented proof of U.S. citizenship. As a result, the FNC was issued and the citizen was fired.

DHS, the government agency that administers E-Verify, has also released data on the TNC error rate. The most recent data analyzed in Westat 2012 is from fiscal year 2010; DHS has separately released statistical E-Verify data for fiscal year 2012.[27] According to DHS's own data, 1.35 percent of workers processed through the E-Verify program in 2012 received a TNC.[28] DHS's own data show that a minimum of 52,000 U.S citizen and work-authorized noncitizen workers received an erroneous TNC that required them to either contact a government agency to correct a database error or

risk losing their jobs.[29] According to DHS's own data, an additional 36,000 to 181,000 workers may have also been affected by a TNC error.[30]

These numbers are likely underestimates. Employers that audit their own E-Verify data report higher error rates than federal government estimates. For example, when Los Angeles County audited its E-Verify results for county workers, it found that "a total of 2.7 percent of the county's E-Verify queries in 2008 and 2.0 percent in 2009 resulted in erroneous tentative nonconfirmations," according to a Migration Policy Institute researcher.[31]

Westat 2012 also examined E-Verify's FNC accuracy rate—an estimate of how many of the final mismatches issued by the system are correctly issued for unauthorized workers. Westat 2012 "estimate[s] that 94 percent of FNCs were accurately issued to unauthorized workers and 6 percent were inaccurately issued to employment authorized workers,"[32] meaning that 6 percent of FNCs were issued to U.S. citizens or work-authorized noncitizens. Although this may sound like an impressive figure, there are notable caveats.

Ohio

A U.S. citizen and former captain in the U.S. Navy with 34 years of service and a history of having maintained a high security clearance was flagged by E-Verify as not eligible for employment. It took him and his wife, an attorney, two months to resolve the discrepancy.

First, this accuracy rate *does not measure* the rate at which E-Verify identifies unauthorized workers. Rather, it simply estimates how often E-Verify correctly issues an FNC to unauthorized individuals (as opposed to U.S. citizens or work-authorized noncitizens).

Second, the report itself acknowledges another limitation. Many employers do not give workers the TNC notice, despite being required under program rules to do so. If the employer does not give the worker the TNC notice, often the worker remains completely unaware of the TNC; in such cases, the TNC would likely convert to an FNC. However, Westat 2012's calculations of the FNC accuracy rate rely on "model-based estimates" of how many employers inform workers of a TNC, instead of relying on more direct evidence (such as direct surveys of workers receiving TNCs).[33] Therefore, the report's estimate of the FNC accuracy rate is "limited by the validity of the model's assumptions."[34]

For example, Westat 2012 assumes that 70 percent of employment-authorized workers who received a TNC were properly informed of the TNC by their employer.[35] However, the percentage of workers who are informed by their employer of a TNC is likely *significantly lower* than 70 percent.[36] These assumptions matter. *The more workers who are presumed to receive notice of a TNC, the higher the estimated FNC accuracy rate will be*. Westat 2012's utility and its analysis of FNC accuracy is limited by these assumptions, since the report does not consider any recent surveys of workers' experiences with the TNC notice procedure.

Discrimination

E-Verify's errors disproportionately impact lawful permanent residents and other noncitizens working legally in the United States.

Westat 2012 finds that although the TNC error rate for U.S. citizens has declined over time, "there was little change in the erroneous TNC rate for noncitizens" during the same period.[37] Simply put, lawful permanent residents (LPRs) and other work-authorized noncitizens receive more erroneous TNCs than U.S. citizens.[38] The TNC error rate—for both LPRs (people working with green cards) and other noncitizens legally authorized to work (e.g., asylees)—is 0.09 percent and 5.4 percent, respectively.[39]

That means that an LPR is *four times* more likely to receive an erroneous TNC than a U.S. citizen is. For other noncitizens the discrepancy is even more pronounced. A noncitizen legally authorized to work in the U.S. is over *twenty-seven times* more likely to receive a TNC than a U.S. citizen is.[40] Because LPRs and other work-authorized noncitizens are much more likely to receive a TNC,[41] and workers who receive a TNC often face negative impacts such as suspension from work or reduced pay,[42] the heightened TNC error rate for LPRs and other work-authorized noncitizens results in discrimination.

E-Verify's higher error rate for LPR and other noncitizen workers compounds the workplace discrimination they already face as a result of employers using E-Verify to prescreen job applicants (in violation of the program's rules) and either requiring workers to present particular documents or refusing to accept documents that, under the I-9 employment eligibility verification process's rules, are to be considered acceptable for establishing a worker's identity and employment eligibility. (The practice of not allowing a worker to choose which documents, from the list of

Texas

A worker received a TNC and visited an SSA office to take care of the problem within the required time period. When he returned to work with proof that he'd gone to the SSA office, the employer told him that E-Verify still showed that the worker was not verified as work-eligible. The TNC then converted to an FNC, and the employer fired the worker. The worker called the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), which contacted the E-Verify Case Resolution Center, and the case was resolved. OSC contacted the employer and discussed the fact that the employer had given the wrong instructions to the worker, ultimately costing him his job. The employer accepted the explanation, returned the worker to work, and paid him $1,450 in lost wages.

acceptable documents, to present when completing the I-9 form is often referred to as employer "document abuse.")

Westat 2012 finds that "Employer compliance [by which is obviously meant "failure to comply"] with E-Verify procedures related to the Form I-9 continues to be a challenge for E-Verify."[43] About a fifth of employers report that "they are more likely to ask noncitizens for specific immigration documents during the Form I-9 process."[44] In addition, Westat 2012 finds that the practice of *prescreening*—putting a worker's identity and employment-eligibility information through E-Verify before hiring the worker—increased from 4 percent in 2008 to 9 percent in 2010, despite improvements to E-Verify training materials.[45] Despite the prohibition on prescreening, Westat 2009 found that at least 57 percent of employers using E-Verify violate the program's rules by using it to prescreen workers; when employers have *illegally prescreened* workers under the current E-Verify rules, 33 percent of prescreened workers are not offered a job.[46] This practice has real-life consequences. Westat 2009 found that 47 percent of workers who were not offered a job because of prescreening couldn't find a new job for two months or longer. And in some instances, it is clear that using E-Verify even encourages employers to hire U.S. citizens exclusively, a practice that usually constitutes a violation of antidiscrimination law.[47]

Workers who receive a TNC or FNC in error may have difficulty correcting the error or may be mistreated.

TNC and FNC errors result in workers being significantly burdened, mistreated, and unjustly fired. For many workers, correcting an erroneous TNC is difficult. Often it requires a worker to travel up to several hours to visit an SSA office. Workers who receive a TNC and want to resolve it must visit an SSA office within eight federal working days of receiving it. In some instances, to discover what the particular error is that's causing the nonconfirmation, the worker must go to extremes—including filing a Privacy Act request, which can take an average of 104 days to process.[48] Although SSA offices can extend the deadline by which a TNC must be resolved to up to 120 days, often such extensions are not properly recorded in the system, resulting in an erroneous FNC being issued.[49]

Westat 2009 examined in great detail the impact of erroneous TNCs on workers and noted that employers *self-report* taking harmful "adverse actions" against workers who receive a TNC,[50] including 17 percent restricting work, 15 percent delaying training, and 2 percent reducing pay as a result of the TNC.[51] Thus, over a third of employers *self-reported* that they took unlawful adverse actions against employees who received TNCs during the verification process.[52]

Given that this statistic is based on self-reported information from a very small survey of all E-Verify users, it is reasonable to assume that actual misuse of the system is higher. In fact, onsite interviews conducted as part of the same report confirm the underreporting. In onsite interviews with workers and employers, Westat found that 37 percent of employers reported taking some type of adverse action against workers who received TNCs; and, of the remaining employers who did not self-report a failure to comply, 29 out of 62 had one or more workers who reported

that adverse action had been taken against them.[53] Thus, overall, *two-thirds of employers* in the onsite survey were found to have taken improper adverse actions against their employees who received a TNC.[54] In Arizona, where using E-Verify was made mandatory for all employers, 28 to 29 percent of employers surveyed self-reported that they did not let workers continue working while resolving a TNC.[55]

If E-Verify is made mandatory, the number of workers affected by system errors—and who could lose their jobs—is likely to increase dramatically.

Currently, E-Verify is used by only 7 percent of employers.[56] Mandating that the remaining 93 percent of employers join the program would likely cause the error rate for all workers to increase, given the enormous expansion of E-Verify that such a mandate would require. According to the Association for Computing Machinery, turning E-Verify into a mandatory program would result in it having to handle at least a *thousand-fold increase* in users, queries, transactions, and communications volumes.[57] Each time a system grows even just *ten* times larger, serious new technical issues arise that were not previously significant.[58]

Employer Noncompliance and Abuse

Employers have regularly misused E-Verify and failed to comply with its rules, resulting in harm to workers, denial of rights, and unjust loss of jobs.

Employers fail to tell their employees about TNCs, take adverse actions against workers during the verification process, commit document abuse, and use E-Verify to prescreen employees—all in violation of the memorandum of understanding employers sign and the program's basic rules. The noncompliance rates of employers that, because of particular federal, state, or local mandates, are required to use E-Verify are even more troubling.

According to Westat 2012, employer "failure" to comply with the terms of the MOU "contributes significantly" to erroneous FNCs and in turn can lead to employment-authorized workers losing their jobs.[59] The report finds that employers' failure to inform workers of TNCs and how to contest them accounts for five percent of the errors in the accuracy of final nonconfirmations.[60] The report deems "the failure of some employers to notify workers of TNCs received" to be one of the major challenges to E-Verify accuracy attributable to employers.[61]

Moreover, a "pattern of lower compliance" may be developing among employers who are required by federal, state, or local mandates to participate in E-Verify.[62] Employers who were required to use E-Verify and did not elect to do so voluntarily were less likely to notify workers of a TNC within the time they are required to do so according to the program's rules.[63] Twenty percent of these employers discouraged workers from contesting TNC findings because of the employers' misperception that contesting rarely leads to a finding of work authorization (compared to a rate of two to four percent for employers who participate in E-Verify voluntarily).[64] This is especially alarming given that the Senate has already passed a bill that would require

all employers in the U.S. to use E-Verify and the House is considering a bill that contains an even more severe E-Verify mandate.

In addition, recently enacted federal, state, and local mandates requiring certain employers to enroll in E-Verify have resulted in a high rate of complete noncompliance by employers. In Arizona, Westat found that "[a]pproximately three-fourths of Arizona employers that should have been using E-Verify . . . are estimated not to have been doing so."[65] It also found that "employers may decide to hire more 'off the books' workers if they face difficulty in hiring legal workers for positions traditionally employing many undocumented workers."[66]

Employer noncompliance is both intentional and unintentional.

One major reason for employers failing to comply with E-Verify's rules is that employers do not fully understand their responsibilities in the complex E-Verify verification system.[67] For instance, approximately 40 percent of employers reported that they are unsure of how to enter certain types of names in E-Verify, including single names, compound or hyphenated last names, or very long names.[68] Still other employers are "unwilling to follow the procedures."[69] For example, Westat 2012 finds that employers sometimes "encourage workers to show documents not subject to the Photo Matching process."[70] Moreover, employer-generated inaccuracies also occur due to employer data input errors because of carelessness, ambiguous handwriting, and a lack of understanding of how to complete the I-9 form.[71] Even if federal data were completely accurate, which it is not, employers' failure to enter data accurately would still result in potential job loss for U.S. citizens and other employment-authorized workers.[72]

California

A Latino supermarket chain in northern California enrolled in E-Verify during a union organizing campaign. In the midst of the campaign by the United Food and Commercial Workers (UFCW) to organize the workers, the supermarket announced that it had enrolled in E-Verify to screen its workers' employment eligibility. Although the chain initially claimed that the federal government had compelled it to participate in E-Verify, that claim proved to be false. After the chain announced its participation in E-Verify and, subsequently, that it was going to be subjected to an I-9 audit, many of its workers quit their jobs, severely undermining the UFCW's organizing efforts.

Despite high rates of employer noncompliance, monitoring and compliance by USCIS of E-Verify misuse is inadequate. USCIS established its monitoring and compliance branch in 2009,[73] but as of February 2011 it has not terminated a single employer's E-Verify memorandum of understanding and no employers have been referred to either U.S. Immigration and Customs Enforcement (ICE) or the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) for

misuse of the system.[74] Westat 2012 finds that absent proper monitoring there is "little incentive" for employers to comply with procedures that are "contrary to what employers perceive to be [in] their own best interests."[75] In fact, Westat 2012 finds that "Without a monitoring and compliance effort that is stronger and more targeted than the current effort, intentional employer noncompliance with program procedures is likely to continue and increase, diluting the ability of the Program to meet its goals."[76]

Labor Rights

E-Verify undermines labor and employment law and standards, and makes workers more vulnerable to workplace abuse.

Unlike Westat 2009, Westat 2012 fails to acknowledge, let alone address, the ways that bad-apple employers have used E-Verify to retaliate against workers and to chill them from exercising their workplace rights.

In the absence of a fully authorized workforce, E-Verify makes workers more vulnerable. In workplaces across the country, workers' basic labor rights are routinely violated: they are not paid even the minimum wage, for example, or overtime, and they face unlawful retaliation. According to one study, 26 percent of low-wage workers were unlawfully paid less than minimum wage for their previous week's work and 76 percent did not receive the legal wage for overtime hours.[77] Workers frequently face illegal retaliation for asserting their legal rights in the workplace,[78] and immigrant workers are particularly vulnerable, given that an unscrupulous employer won't hesitate to use a worker's immigration status against him if it suits the employer.[79] Workers who complain about unlawful treatment face retaliation in the form of firing, suspension, or even physical abuse. Some workers are retaliated against for merely asserting their right to work in the U.S.[80]

California

Six long-term workers at a luxury hotel were fired after the employer reverified their employment eligibility using E-Verify. The workers had been in discussions with local union representatives about working conditions and a potential union drive. In the midst of the workers' union-related activity, the employer used E-Verify to unlawfully reverify their work eligibility and subsequently fired them. The terminations severely weakened the union organizing efforts.

E-Verify, as a potential mechanism for retaliation, compounds workers' vulnerability and undermines labor and employment laws and standards. Like other immigration enforcement programs that are worksite-focused or targeted at workers or employers, E-Verify has already been used by unscrupulous employers to retaliate against workers who complain about mistreatment and to undercut workers' efforts to improve their working conditions.[81] Even just threats of retaliation can chill workers from asserting their legal rights or filing complaints about workplace

violations, weakening the ability of federal and state agencies to effectively enforce labor and employment laws.

The misuse of E-Verify by unscrupulous employers not only hurts workers, it de-levels the playing field for all employers. Misuse of E-Verify gives law-breaking employers a competitive advantage over law-abiding ones. As ICE has recognized, unscrupulous businesses that exploit undocumented workers gain a competitive advantage over responsible employers who follow the law.[82]

New Jersey

Several workers were engaged in an active organizing effort to better their workplace. After they submitted a petition to the National Labor Relations Board (NLRB) to seek a union election, the employer fired two of the worker organizers. The workers filed a charge at the NLRB to challenge the firings.

After initially resisting reinstating the workers, the employer finally agreed to reinstate them. Approximately one month later, the employer sent five worker organizers letters claiming that E-Verify had revealed discrepancies with respect to their Social Security numbers. The letter stated that if the workers did not provide proper documentation of their work eligibility within 72 hours, they would be fired. The letter the workers received was not a TNC notice.

Apparently, the employer had run existing employees' information through E-Verify, in violation of the E-Verify MOU. The workers were then fired for purportedly not providing valid Social Security numbers. As a result, they couldn't participate in the union election.

The workers continue to fight to ensure their rights to a safe and just workplace. The employer continues to be enrolled in E-Verify despite having violated the program's rules.

It is unfortunate that Westat 2012 completely overlooks the array of harms that misuse of E-Verify can cause both to workers and to law-abiding businesses. By failing to account for such harms, the report's assessment of employer malfeasance within the E-Verify program is incomplete, and its policy recommendations for improving employer compliance are necessarily limited.

Recommendations

As Congress continues to consider an E-Verify mandate, it is imperative that the program's deficiencies are corrected. The National Immigration Law Center continues to have significant concerns about the adverse impacts of E-Verify on low-wage workers' rights. These impacts would be *dramatically amplified* if Congress were to require all employers to use it. Therefore, since Congress is contemplating an E-Verify mandate, we believe that Congress and the administration should:

Mitigate E-Verify's negative impact by enacting immigration reform that provides a road to citizenship and protects workers' labor and employment rights.

Absent a fully legalized workforce, a combination of E-Verify program errors, employer misuse, and

discrimination will make workers more vulnerable and thus cause working conditions to deteriorate generally. Instead of focusing on ineffective "solutions" such as immigration enforcement–only legislation, Congress should pass commonsense legislation that overhauls our country's immigration system, provides a road to citizenship for aspiring Americans, and protects all workers' rights. If implemented as part of broad and inclusive immigration reform, protections for workers' labor and employment rights can "help rid the system of bottom-feeding employers who hire and underpay and otherwise exploit cheap immigrant labor, dragging down wages and workplace standards for everyone."[83]

Create systems, including a formal review process, that would make it easier for U.S. citizens, lawful permanent residents, and other work-authorized noncitizens to correct E-Verify errors and maintain their jobs.

Currently, workers who are issued an erroneous FNC by E-Verify have no formal way to resolve the error, get their job back, or get compensation for the time they were out of a job due to the program's mistake. Westat 2012 urges DHS to "[c]onsider adding a formal appeal process that employers or their workers could use if they disagree with the final E-Verify finding."[84] This process should enable U.S. citizens, LPRs, and other work-authorized noncitizens to correct erroneous TNCs and FNCs easily, remain on the job while doing so, and receive compensation for any time they are out of a job due to E-Verify system errors.

Reduce employer misuse of E-Verify by penalizing those who abuse it.

It is clear from both the 2009 and 2012 Westat reports that employer misuse of E-Verify and noncompliance with program rules is widespread and ongoing. Westat 2012 also shows that USCIS monitoring and compliance efforts have been inadequate, since no employer, as of February 2011, had had its MOU terminated, nor had any employers been referred to ICE or to OSC for further investigation for misusing E-Verify or violating it rules.[85] Employers that fail to comply with E-Verify program rules should face sanctions for doing so, since "without monitoring and following up as needed on improper E-Verify and other employment procedures, there is little incentive for employers to follow the proper procedures."[86] Absent significant and enforceable penalties for employer noncompliance or abuse of the system, employer misuse of E-Verify flourishes.

We agree with Westat that "it is necessary" for USCIS "to have a way of identifying and acting upon serious program violations that occur."[87] USCIS should follow the recommendation in Westat 2012 to expand "USCIS monitoring and compliance efforts" and, as part of those expanded monitoring efforts, USCIS should regularly consult workers and their advocates about employers' misuse of the program.[88] USCIS's reliance on employer self-reporting is insufficient to ensure that the E-Verify program is being properly administered and that employers are complying with its rules.

Ensure that E-Verify is not used to undermine workers' rights under labor and employment law.

Because E-Verify compounds workers' vulnerability and can undermine the enforcement of labor and employment laws and standards, the program should explicitly prohibit—as a condition explicitly stated in the MOU that each employer using it must sign—using E-Verify to retaliate against workers or otherwise undermine their rights under labor and employment laws. This prohibition should be made enforceable through meaningful penalties. Because immigration enforcement at worksites can undermine the enforcement of labor law, the U.S. Department of Labor should be given additional resources that would allow it to expand labor law enforcement in states mandating E-Verify's use, or, in the event that a federal mandate is imposed, nationwide.

Before any expansion of E-Verify as part of immigration reform, ensure that the program meets specified requirements regarding database accuracy, low error rates, and measurable employer compliance.

Requiring that all employers in the U.S. use E-Verify would represent an enormous increase in utilization of the program, from only 20 million E-Verify inquiries—by only 7 percent of U.S. employers — in fiscal year 2012 to over 60 million annual inquiries for new hires alone under a mandatory E-Verify regime. Moving forward without addressing current problems within the system will result in harm to all workers and businesses.

Any E-Verify mandate should include regular performance evaluations that track error rates and that address, at a minimum, wrongful terminations due to system errors, employer compliance with program rules, and employer abuse of the system. The best way to ensure accurate implementation of mandatory E-Verify is to set standards for system performance up front, clear benchmarks that need to be met, and timelines for meeting those benchmarks. The benchmarks should be met *before* any expansion of E-Verify is implemented.

For too long the national conversation about E-Verify has omitted any discussion about its impact on low-wage workers. Because E-Verify relies on communication between the government (DHS) and employers (who are required to comply with immigration, i.e., employment eligibility verification, law and are charged with actually administering the eligibility verification process), workers' perspectives are often overlooked, even though *workers have the most to lose*. By highlighting here E-Verify's impact on low-wage workers, perhaps this report will spark a broader conversation about these issues. We hope it will serve as a springboard for change—both administrative and legislative—and bring more attention to low-wage immigrant workers' particular stake in a program that may one day, sooner or later, impact all of us.

NOTES

The sources of the stories highlighted in this report are the following:

Minnesota *(p. 3).* Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) telephonic interventions related to E-Verify for fiscal year 2010, www.justice.gov/crt/about/osc/htm/telephone_interventions/ti_e-verify.php.

Ohio *(p. 4).* Personal account related at a Jan. 24, 2009, town hall meeting in Ashtabula, Ohio, sponsored by Building Unity in the Community and billed as "Why We Need Comprehensive Immigration Reform."

Texas *(p. 5).* OSC telephonic interventions related to E-Verify for fiscal year 2013, www.justice.gov/crt/about/osc/htm/telephone_interventions/ti_e-verify.php.

California *(market workers, p. 8).* Eunice Hyunhye Cho and Rebecca Smith, *Workers' Rights on ICE: How Immigration Reform Can Stop Retaliation and Advance Labor Rights* (National Employment Law Project, 2013), http://nelp.3cdn.net/0e04248130076eb182_6am6boifj.pdf, p. 15. For more information, see Lee Romney and Cindy Chang, "Latino Food Chain's Participation in E-Verify Leaves a Bad Taste," *Los Angeles Times*, September 17, 2012, http://articles.latimes.com/2012/sep/17/local/la-me-mi-pueblo-20120917.

California *(hotel workers, p. 9).* Account related by Rocio Alejandra Avila, an attorney, on July 29, 2013.

New Jersey *(p. 10).* Account of events based upon NILC staff conversations with advocates assisting workers to enforce their labor rights (Oct. 2012–Aug. 2013) and review of relevant documentation (including a charge filed with the National Labor Relations Board). The employer's continued use of E-Verify was confirmed by a search using the USCIS E-Verify Employer Search Tool, http://tinyurl.com/br9jn55.

NUMBERED NOTES

[1] *Evaluation of the Accuracy of E-Verify Findings* (Westat, July 2012) (hereinafter "Westat, July 2012"), www.uscis.gov/USCIS/Verification/E-Verify/E-Verify_Native_Documents/Everify%20Studies/Evaluation%20of%20the%20Accuracy%20of%20EVerify%20Findings.pdf. Though dated July 2012, this report was not released to the public until July 2013.

[2] Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L 104-208, 110 Stat. 3009-655 (Sept. 30, 1996), sec. 401.

[3] S. Res. 3245, 112th Cong. (2012) (enacted), www.gpo.gov/fdsys/pkg/BILLS-112s3245enr/pdf/BILLS-112s3245enr.pdf.

[4] In 2001, 1,064 employers were enrolled in E-Verify. By contrast, in 2011, 292,624 employers were enrolled. *See E-Verify: History & Milestones* (U.S. Citizenship & Immigration Services, Feb. 25, 2013), www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextchannel=7c579589cdb76210VgnVCM100000b92ca60aRCRD.

[5] As of Nov. 30, 2012, 20 states required some or all employers in the state to use E-Verify. *E-Verify* (National Conference of State Legislators, Dec. 18, 2012), www.ncsl.org/issues-research/immig/everify-faq.aspx.

[6] *E-Verify: History & Milestones* (U.S. Citizenship & Immigration Services, Feb. 25, 2013), www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextchannel=7c579589cdb76210VgnVCM100000b92ca60aRCRD.

[7] Currently, there are approximately 6 million employers in the U.S. *See* U.S. Census Bureau, Statistics about Business Size (2008), www.census.gov/econ/smallbus.html. U.S. Citizenship and Immigration Services (USCIS) reports that, currently, approximately 432,000 employers participate in E-Verify. *Customer Satisfaction Survey: E-Verify* (USCIS, 2013). This number equates to roughly 7 percent of all employers.

[8] See 2009 Employee Verification Amendment Act of 2009, H.R. 2028, 111th Cong. (Jan. 23, 2009); 2009 Employee Verification Amendment Act, H.R. 662, 111th Cong. (Jan. 23, 2009); 2009 Border Sovereignty & Protection Act, H.R. 2083, 111th Cong. (Apr. 23, 2009); 2009 Secure America Through Verification and Enforcement, H.R. 3308, 111th Cong. (July 23, 2009); 2011 Electronic Employment Eligibility Verification and Illegal Immigration Control Act, H.R. 483, 112th Cong. (Jan. 26, 2011); E-Verify Modernization Act of 2011, H.R. 693, 112th Cong. (Feb. 14, 2011); 2011 Legal Workforce Act, H.R. 2164, 112th Cong. (June 14, 2011); 2011 Achieving Accountability through Electronic Verification Act, S. 1196, 112th Cong. (June 14, 2011).

[9] Border Security, Economic Opportunity, and Immigration Modernization Act of 2013, S. 744, 113th Cong. (June 27, 2013); *Analysis of Senate Immigration Reform Bill: Title III: Interior Enforcement* (NILC, June 22, 2013), www.nilc.org/document.html?id=899.

[10] Border Security, Economic Opportunity, and Immigration Modernization Act of 2013, S. 744, 113th Cong. (June 27, 2013); *Analysis of Senate Immigration Reform Bill: Title III: Interior Enforcement*.

[11] "House Judiciary Committee Approves Bill to Expand E-Verify Nationwide," a Committee on the Judiciary press release, June 26, 2013, http://judiciary.house.gov/news/2013/06262013_3.html. For a more detailed critique of the Legal Workforce Act, see *Lamar Smith's Employment Eligibility Verification System: Harmful for the Economy and Dangerous for U.S. Workers* (NILC, May 2013), www.nilc.org/document.html?id=555.

[12] Legal Workforce Act, H.R. 1772, 113th Cong. (Apr. 26, 2013).

[13] H.R. 1772; Border Security, Economic Opportunity, and Immigration Modernization Act of 2013, S. 744, 113th Cong. (June 27, 2013).

[14] *E-Verify User Manual for Employers* (U.S. Citizenship and Immigration Services, Pub. No. M-775, June 2013) (hereinafter *E-Verify User Manual for Employers)*, www.uscis.gov/USCIS/Verification/E-Verify/E-Verify_Native_Documents/manual-employer_comp.pdf, pp. 8–10.

[15] Westat, July 2012, p. 5.

[16] Westat, July 2012, p. 5.

[17] Participating employers are required to post in the worksite that that they participate in the E-Verify program. "E-Verify Participation Posters" webpage (USCIS, Feb. 16, 2011), www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=38700f4752f0a210VgnVCM100000082ca60aRCRD&vgnextchannel=38700f4752f0a210VgnVCM100000082ca60aRCRD.

[18] Westat, July 2012, pp. x, 23.

[19] *Findings of the Web Basic Pilot Evaluation* (Westat, Sept. 2007), www.uscis.gov/files/article/WebBasicPilotRprtSept2007.pdf, pp. 44–49.

[20] See 8 U.S.C. § 1324a(e)–(f) (specifying employer civil and criminal penalties for knowingly continuing to employ an unauthorized worker).

[21] *E-Verify User Manual for Employers*, pp. 27–33, 35–43. For example: "E-Verify generates a 'Referral to the Social Security Administration' also called an SSA referral letter that you must provide to the employee. The employee must provide this letter to SSA if he or she chooses to

contest. You must verify the information on the letter, then print, sign, and provide the letter to the employee. The SSA referral letter provides instructions to you and the employee regarding the next steps." *E-Verify User Manual for Employers*, p. 30.

[22] In July 2013, USCIS announced that it would start informing employees of TNCs at the email address provided by the employee on the Form I-9. "Employee Email Field" webpage (USCIS, July 1, 2013), www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=11d3487126a9f310VgnVCM100000082ca60aRCRD&vgnextchannel=d1e8d3cd89f60310VgnVCM100000082ca60aRCRD. While this represents a notable step forward, it is not a panacea for workers' lack of notice. To be effective as a form of notice, it requires workers experiencing a TNC to have Internet access, an email address, a willingness to disclose that address on the Form I-9, a willingness and awareness about the need to check USCIS email messages, and presumably an ability to read the language in which the USCIS notice is written. For low-wage noncitizen workers, these are all potential barriers to effective notice.

[23] Westat, July 2012, p. x.

[24] Westat, July 2012, pp. x, 23.

[25] The Legal Workforce Act requires all employers to use E-Verify on newly hired employees. However, the bill also allows employers to reverify their current workforce using E-Verify. Over the 12 months ending March 2013, total U.S. hires were 51.8 million. See "Job Openings and Labor Turnover—March 2013," a Bureau of Labor Statistics news release, May 7, 2013, www.bls.gov/news.release/pdf/jolts.pdf, p. 3. Fifty-two million multiplied by 0.03 percent (the TNC rate from Westat 2012) equals 155,400 (about 150,000) workers who would experience a TNC. Because the Legal Workforce Act allows employers to reverify all workers, this could result in E-Verify being applied to the entire workforce. As of June 2013, the U.S. workforce was 157,089,000. See "Table A-1: Employment Status of the Civilian Population by Sex and Age" (Bureau of Labor Statistics, U.S. Dept. of Labor, July 5, 2013), www.bls.gov/news.release/empsit.t01.htm. 157,089,000 multiplied by .03 percent is 471,267 (about 500,000 workers) who would experience a TNC if E-Verify were used on the entire workforce (i.e., if every employer reverified its entire workforce).

[26] See "Annual Estimates of the Resident Population for Incorporated Places Over 50,000, Ranked by July 1, 2012 Population" (U.S. Census Bureau American FactFinder website), http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk (or search for "Annual Estimates of the Resident Population for Incorporated Places Over 50,000, Ranked by July 1, 2012 Population" using Google or another search engine).

[27] See "E-Verify Program Statistics" webpage (USCIS, July 19, 2013) (hereinafter "E-Verify Program Statistics, July 19, 2013"), www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=7c579589cdb76210VgnVCM100000b92ca60aRCRD&vgnextchannel=7c579589cdb76210VgnVCM100000b92ca60aRCRD.

[28] E-Verify Program Statistics, July 19, 2013.

[29] The agency reports that 0.90 percent of workers for whom E-Verify issued TNCs did not contest the TNC, either because they chose not to or were unaware of the opportunity to do so. Unfortunately, USCIS does not provide estimates of the percentage of these workers who actually have work authorization but were unaware of their ability to contest the TNC. USCIS reports that 0.18 percent of workers received a TNC that remained unresolved at the end of the fiscal year. USCIS also does not provide estimates for the percentage of these workers who have work authorization but were unaware of their opportunity to contest the TNC. Finally, USCIS reports that 0.01 percent of employees receive an FNC, contest the FNC, and are not found to be work-

authorized. Given the lack of data specifying the number of work-authorized individuals within the 0.90 percent and the 0.18 percent, the estimate of workers experiencing a TNC in error is stated as a range. See E-Verify Program Statistics, July 19, 2013.

[30] These numbers are based upon the total number of E-Verify inquiries in fiscal year 2012—20,205,359—multiplied by 0.18 percent and 0.90 percent respectively. See E-Verify Program Statistics, July 19, 2013.

[31] Marc Rosenblum, *E-Verify: Strengths, Weaknesses, and Proposals for Reform* (Migration Policy Institute, Feb. 2011), www.migrationpolicy.org/pubs/E-Verify-Insight.pdf, p. 6.

[32] Westat, July 2012, p. x.

[33] The 2012 Westat report cites to Appendix C of the 2009 Westat report, *Findings of the E-Verify Program Evaluation*, for an in-depth explanation of the methodology used for model-based estimates of inaccuracy rates. See Westat, July 2012, p. 21, n. 29. However, since the 2009 report lacks an Appendix C, it appears that the citation is intended to be to Appendix B of that report. See *Findings of the E-Verify Program Evaluation* (Westat, Dec. 2009) (hereinafter "Westat, Dec. 2009"), www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf, Appendix B, p. B-9 (explaining how the percentage of work-authorized workers who were informed of their TNCs was estimated).

[34] Westat, July 2012, p. x.

[35] See Westat, Dec. 2009, Appendix B, p. B-9.

[36] For example, the 2009 Westat report finds that 170 of 403 workers surveyed—which equates to 42 percent—said that they were not notified of the TNC by their employer. Westat, Dec. 2009, p. 199. That same report found that of "96 onsite study employers who said they always notified their employees of TNCs, 41 had one or more workers who said they were not notified of a problem with their documents." Westat, Dec. 2009, p. 154. By this measure, 43 percent of workers report not receiving notice of the TNC from their employer. Although this data suggests that employers provide notice of a TNC to their workers significantly less than 70 percent of the time, the model on which both the 2009 and 2012 Westat reports base their estimates assumes a 70 percent employee notification rate. Although the 2009 report contains contradictory information from employers versus workers as to how often employers provided notice of a TNC, in estimating this percentage, the 2009 report considers only employer-reported information and fails to factor in worker-reported information.

[37] Westat, July 2012, p. 24.

[38] Westat, July 2012, p. 24. Between April and June 2005, the E-Verify TNC error rate for U.S. citizens was 0.6 percent; the E-Verify TNC error rate for lawful permanent residents was .08 percent; the E-Verify TNC error rate for other noncitizens was 4.2 percent. However, between April and June 2010, the E-Verify TNC error rate for lawful permanent residents was 0.09 percent; the E-Verify TNC error rate for other noncitizens was 5.4 percent.

[39] Westat, July 2012, p. 24. For this report, we use the most recent TNC error rate cited by Westat for the period between April and June 2010. Between April and June 2010, the E-Verify TNC error rate for LPRs was 0.09 percent; the E-Verify TNC error rate for other noncitizens was 5.4 percent.

[40] Westat, July 2012, p. 39; Westat, Dec. 2009, pp. 205–206.

[41] Westat, July 2012, p. 24.

[42] Westat, Dec. 2009, pp. 205–206.

[43] *Findings of the E-Verify User Survey* (Westat, July 8, 2011) (hereinafter "Westat, July 2011"), www.uscis.gov/USCIS/Verification/E-Verify/E-

Verify_Native_Documents/Everify%20Studies/WESTAT%20Findings%20of%20the%20EVerify%20User%20Survey.pdf, p. 77; 8 U.S.C. § 1324b(a)(6).

[44] Westat, July 2011, p. 77; 8 U.S.C. § 1324b(a)(6).

[45] Westat, July 2011, p. 64. Prescreening was more prevalent among small employers and temporary agencies. Small employers (with up to 25 workers) were more likely than larger employers to report that E-Verify was typically used to verify work authorization either before a job offer was made or after a job offer was made but before the worker has accepted (17 percent compared to 5 percent of larger employers). Westat, July 2011, p. 69. Twenty-six percent of temporary agencies reported prescreening. Westat, July 2011, p. 64.

[46] According to the Westat 2009 survey, 114 workers reported that they were prescreened and 38 who were prescreened reported that they were not offered a job. The 33 percent was reached by dividing 38 by 114. See Westat, Dec. 2009, pp. 140, 149.

[47] Angus Loten, Sarah E. Needleman, and Adam Janofsky, "Small Businesses Say U.S. Background-Check System Has Drawbacks," *Wall Street Journal*, July 24, 2013, http://online.wsj.com/article/SB10001424127887323971204578625813786973872.html.

[48] *Employment Verification: Federal Agencies Have Taken Steps to Improve E-Verify, but Significant Challenges Remain* (Government Accountability Office, Pub. No. GAO-11-146, Dec. 2010) (hereinafter "GAO, Dec. 2010"), www.gao.gov/new.items/d11146.pdf, p. 12.

[49] GAO, Dec. 2010, pp. 38–39.

[50] Westat, Dec. 2009, pp. 205–206. Small employers were even more likely to report that work assignments must be restricted until work authorization is confirmed (15 percent compared to 10 percent of larger employers) and that training is delayed until after authorization is confirmed (22 percent compared to 10 percent of larger employers). Westat, July 2011, p. 69.

[51] Westat, Dec. 2009, p. 157.

[52] Westat, Dec. 2009, p. 157.

[53] Westat, Dec. 2009, p. 157.

[54] Westat, Dec. 2009, p. 157.

[55] *The Arizona Mandatory E-Verify Experience: Evaluation Findings* (Westat, Dec. 2010) (hereinafter "Westat, Dec. 2010"), www.uscis.gov/USCIS/Verification/E-Verify/E-Verify_Native_Documents/Everify%20Studies/The%20Arizona%20Mandatory%20EVerify%20Experience_Evaluation%20Findings.pdf, p. 69.

[56] See *E-Verify Receives High Ratings in Customer Survey* (USCIS, Feb. 21, 2013), www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=1671ed7ebecfc310VgnVCM100000082ca60aRCRD&vgnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD. Since FY 2009, 432,000 employers are enrolled in E-Verify. There are 6,049,655 employers in the U.S. See "Statistics about Business Size (including Small Business) from the U.S. Census Bureau" webpage, www.census.gov/econ/smallbus.html (last accessed Aug. 7, 2013). The figure of 7 percent was arrived at by dividing the number of E-Verify–enrolled employers by the number of all employers in the U.S.

[57] See *Mandatory Electronic Employment Verification Systems: Technological Implications* (Association for Computing Machinery, undated) (hereinafter "*Mandatory Electronic Employment Verification Systems*"), http://usacm.acm.org/images/documents/eevs_issue_brief.pdf.

[58] See *Mandatory Electronic Employment Verification Systems*.

[59] Westat, July 2012, p. 39.

[60] Westat, July 2012, p. 39.

[61] Westat, July 2012, p. 73.

[62] Westat, July 2011, p. 67. The mandate may substantially change compliance rates because of opposition by employers. A separate Westat study of nonusers found that a majority of the case study participants either strongly opposed a mandatory program (25 percent) or opposed it (32 percent). *The Practices and Opinions of Employers Who Do Not Participate in E-Verify* (Westat, Dec. 2010), www.uscis.gov/USCIS/Resources/Reports/E-Verify/e-verify-non-user-dec-2010.pdf, p. 43. A December 2008 report by Judith Gans at the University of Arizona reported that 22 percent of the state's small businesses surveyed in the third quarter of 2008 believed the program had "negative" or "very negative" effects on them. Judith Gans, *Arizona's Economy and the Legal Arizona Workers Act* (Udall Center for Studies in Public Policy, Univ. of Arizona, Dec. 20008), http://udallcenter.arizona.edu/immigration/publications/2008_GANS_lawa.pdf, p. 11. These negative perceptions may also affect compliance.

[63] Westat, July 2011, p. 67. Within a day or less (62 percent compared to 74 to 84 percent of other employers), in private (86 percent compared to 96 to 98 percent of other employers), in person (73 percent compared to 84 to 91 percent of other employers), or in writing (88 percent compared to 90 to 94 percent of other employers).

[64] Westat, July 2011, p. 67.

[65] Westat, Dec. 2010, p. 34.

[66] Westat, Dec. 2010, p. 45.

[67] Westat, July 2012, p. 40.

[68] Westat, July 2011, p. 77.

[69] Westat, July 2012, p. 39.

[70] Westat, July 2012, p. xiv.

[71] Westat, July 2012, p. 74.

[72] Westat, July 2012, p. 31.

[73] Department of Homeland Security, Privacy Act of 1974; USCIS-009 Compliance Tracking and Monitoring System (CTMS) System of Record Notice, 74 Fed. Reg., No. 98, pp. 24022–24027 (May 22, 2009).

[74] Westat, July 2012, p. 40.

[75] Westat, July 2012, p. 40.

[76] Westat, July 2011, p. 78 (in the context of a recommendation that "USCIS should enforce a strong [employer] monitoring and compliance program").

[77] Annette Bernhardt, et al., *Broken Laws, Unprotected Workers* (Center for Urban Economic Development, National Employment Law Project, and UCLA Institute for Research on Labor and Employment), http://nelp.3cdn.net/e470538bfa5a7e7a46_2um6br7o3.pdf, p. 2.

[78] Annette Bernhardt, et al., p. 3 (finding that 43 percent of workers who had made a complaint to their employer or attempted to form a union experienced one or more forms of illegal retaliation from their employer).

[79] Eunice Hyunhye Cho and Rebecca Smith, *Worker Rights on ICE: How Immigration Reform Can Stop Retaliation and Advance Labor Rights* (National Employment Law Project, 2013), http://nelp.3cdn.net/0e04248130076eb182_6am6boifj.pdf; Paul Harris, "Undocumented Workers' Grim Reality: Speak Out on Abuse and Risk Deportation," *The Guardian UK*, March 28, 2013, www.theguardian.com/world/2013/mar/28/undocumented-migrants-worker-abuse-deportation.

[80] "Justice Department Settles with Florida Janitorial Services Company Over Immigration and Nationality Act Violations," U.S. Dept. of Justice press release, Sept. 27, 2012, www.justice.gov/opa/pr/2012/September/12-crt-1169.html.

[81] See Eunice Hyunhye Cho & Rebecca Smith, pp. 9–10; Written Statement of Emily Tulli, Worker Rights Policy Attorney, National Immigration Law Center, submitted to the House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security and International Law, Hearing on ICE Worksite Enforcement: Up to the Job?, Jan. 26, 2011, www.nilc.org/document.html?id=360, p. 5.

[82] See *Fact Sheet: Worksite Enforcement* (U.S. Immigration and Customs Enforcement, Apr. 1, 2013), www.ice.gov/news/library/factsheets/worksite.htm (see the pop-down item under the heading "How do businesses and communities suffer?" ("Responsible employers who seek to conduct their business lawfully are put at an unfair disadvantage as they try to compete with unscrupulous businesses. Such businesses gain a competitive edge by paying illegal alien workers low wages.").

[83] "Immigration Reform and Workers' Rights" (editorial), *New York Times*, Feb. 20, 2013, www.nytimes.com/2013/02/21/opinion/immigration-reform-and-workers-rights.html; see also Michael J. Wishnie, "Prohibiting the Employment of Unauthorized Immigrants: The Experiment Fails" (2007), *Faculty Scholarship Series*, Paper 925, http://digitalcommons.law.yale.edu/fss_papers/925.

[84] Westat, July 2012, p. 76

[85] Westat, July 2012, p. 40.

[86] Westat, July 2012, p. 40.

[87] Westat, July 2012, p. 78.

[88] Westat, July 2012, p. 40.