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**“E-Verify: Ensuring Lawful Employment in America”**

**November 19, 2025**

**Subcommittee on Workforce Protections**  
**Committee on Education and the Workforce**  
**United States House of Representatives**

Chairman Mackenzie, Ranking Member Omar, and Members of the Subcommittee:

Thank you for the opportunity to provide testimony on the E-Verify program. My name is Jessie Hahn, and I am the Senior Counsel for Labor and Employment Policy at the National Immigration Law Center (NILC). NILC appreciates the Committee’s attention to this critical issue, as E-Verify’s impact on workers, employers, and the broader economy cannot be overstated.

NILC is a nonpartisan, non-profit national legal advocacy organization dedicated to defending and advancing the rights of low-income immigrants and their families. Since its inception in 1979, NILC has earned a national reputation as a leading expert on the intersection of immigration law and employment rights. NILC has analyzed, and advocated for improvements to, the E-Verify program since its initial implementation in 1997 as the Basic Pilot Program. Over the years, we have worked closely with the Department of Homeland Security (DHS), the Social Security Administration (SSA), and the Department of Justice’s Immigrant and Employee Rights Section to address E-Verify’s adverse impact on workers – immigrants and U.S.-born alike. Since I joined NILC ten years ago, I’ve researched and written on the impacts of E-Verify, provided technical assistance to nonprofit worker rights organizations and labor unions in cases where E-Verify has adversely affected their members, and advocated against the expansion of this deeply flawed program.

My testimony today focuses on why NILC strongly opposes any expansion of E-Verify absent comprehensive immigration reform and robust worker protections. Mandatory E-Verify has been included in multiple major immigration reform proposals since 2005, yet the program remains deeply flawed. It is ineffective and harmful to workers and employers alike. It does not prevent unauthorized employment, pushes workers off payrolls and into the informal economy, and creates significant burdens for lawful workers and businesses.

## The History, Function, and Current Use of E-Verify

E-Verify is a federal program designed to help employers confirm the work authorization of newly hired employees. Originally launched as the Basic Pilot Program pursuant to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Congress has reauthorized it several times, and its use has expanded significantly since the early 2000s.<sup>1</sup> While participation remains largely voluntary, certain employers are required to use E-Verify under federal and state law. For example, 22 states mandate its use for some employers,<sup>2</sup> certain federal contractors must enroll,<sup>3</sup> employers hiring F-1 visa students seeking STEM OPT extensions are required to participate,<sup>4</sup> and some employers are required to participate in E-Verify pursuant to a court order or settlement.

Despite this growth, E-Verify is far from universal. In 2022, about 1,098,000 employers were enrolled,<sup>5</sup> representing only 13 percent of all U.S. employers.<sup>6</sup> This limited adoption underscores that, while E-Verify is a widely available tool, its use is not yet a standard practice across the labor market.

The system works as a complement to the existing I-9 employment eligibility verification process. Employers who choose or are required to participate must register, electronically sign the E-Verify Terms and Conditions, and complete online training.<sup>7</sup> For each new hire, the employer submits basic biographical information from the employee's I-9 Form – such as name, date of birth, Social Security number, and citizenship status – through a secure online portal within three business days of hire.<sup>8</sup> E-Verify then cross-checks this information against Social Security Administration records and, for noncitizens and some naturalized citizens, against Department of Homeland Security databases.<sup>9</sup>

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<sup>1</sup> OMNIBUS CONSOLIDATED APPROPRIATIONS ACT, 1997, [Pub. L. No. 104-208](#), September 30, 1996, 110 Stat. 3009, Div. C, §§ 401 et seq.

<sup>2</sup> National Conference of State Legislatures, Immigration Legislation Database, <https://www.ncsl.org/immigration/immigration-legislation-database>. Also see Equifax, 2025 E-Verify State Requirements, <https://workforce.equifax.com/e-verify-state-requirements>

<sup>3</sup> Federal Acquisition Regulation; FAR Case 2007-013, Employment Eligibility Verification, 73 FR 67651-01.

<sup>4</sup> Improving and Expanding Training Opportunities for F-1 Nonimmigrant Students with STEM Degrees and Cap-Gap Relief for All Eligible F-1 Students, 81 FR 13040-01.

<sup>5</sup> E-Verify webpage currently says 1.44M employers enrolled <https://www.e-verify.gov/about-e-verify/what-is-e-verify>

<sup>6</sup> The most recent statistics indicate that there were 8.3 million U.S. employer businesses in 2022, according to the Census Bureau's 2022 County Business Patterns. U.S. Census Bureau, Telling the Story of the Nation's Smallest Businesses, <https://www.census.gov/library/stories/2025/05/smallest-businesses.html>. According to E-Verify's website, there were 1,098,000 employers participating in E-Verify in 2022. <https://www.e-verify.gov/about-e-verify/history-and-milestones>. 1,098,000 is 13% of 8,300,000 total U.S. employer businesses.

<sup>7</sup> M-775, E-Verify User Manual, current as of May 2025, p. 12 <https://www.e-verify.gov/e-verify-user-manual>

<sup>8</sup> M-775, E-Verify User Manual, current as of May 2025, p. 26 <https://www.e-verify.gov/e-verify-user-manual>

<sup>9</sup> M-775, E-Verify User Manual, current as of May 2025, p. 21 <https://www.e-verify.gov/e-verify-user-manual>

Most queries return immediate confirmation that the worker is authorized to work. However, if the system cannot confirm eligibility, it issues a “tentative nonconfirmation,” or TNC.<sup>10</sup> The employee then has eight business days to contest the finding by contacting the appropriate federal agency, often in person.<sup>11</sup> If the issue is not resolved, the system issues a “final nonconfirmation,” requiring the employer to terminate the worker or risk penalties for knowingly employing someone unauthorized.<sup>12</sup> While errors are rare, they do occur – sometimes affecting U.S. citizens or authorized noncitizens – and can result in wrongful job loss.

## **E-Verify Error Rates and Their Impact on U.S. Citizens and Authorized Workers**

Independent evaluations of E-Verify have revealed persistent accuracy challenges that can lead to job loss for U.S. citizens and work-authorized noncitizens. Two key metrics illustrate these issues: the erroneous tentative nonconfirmation (TNC) rate and the final nonconfirmation (FNC) accuracy rate. The erroneous TNC rate measures how often authorized workers receive an initial mismatch before being cleared,<sup>13</sup> while the FNC accuracy rate reflects how often the system correctly identifies unauthorized workers rather than mistakenly flagging authorized individuals.<sup>14</sup>

According to the Westat 2012 study, the overall TNC error rate was 0.3 percent, and for U.S. citizens specifically, 0.2 percent.<sup>15</sup> While these percentages may seem small, they translate into significant real-world consequences. If E-Verify were mandated nationwide and these error rates held, between 193,000 and 521,000 authorized workers – including citizens and lawful permanent residents – would face the burden of correcting government records or risk losing their jobs.<sup>16</sup> While we know that the error rates have decreased since the Westat 2012 study, current externally-reviewed data on the error rate is unavailable.

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<sup>10</sup> M-775, E-Verify User Manual, current as of May 2025, p. 58 <https://www.e-verify.gov/e-verify-user-manual>

<sup>11</sup> E-Verify, How to Process a Tentative Nonconfirmation (Mismatch), <https://www.e-verify.gov/employees/tentative-nonconfirmation-overview/how-to-process-a-tentative-nonconfirmation-mismatch>

<sup>12</sup> M-775, E-Verify User Manual, current as of May 2025, p. 81 <https://www.e-verify.gov/e-verify-user-manual>

<sup>13</sup> Andorra Bruno, Electronic Employment Eligibility Verification, Congressional Research Service, p. 9

[https://www.congress.gov/crs\\_external\\_products/R/PDF/R40446/R40446.13.pdf](https://www.congress.gov/crs_external_products/R/PDF/R40446/R40446.13.pdf)

<sup>14</sup> Andorra Bruno, Electronic Employment Eligibility Verification, Congressional Research Service, p. 17

[https://www.congress.gov/crs\\_external\\_products/R/PDF/R40446/R40446.13.pdf](https://www.congress.gov/crs_external_products/R/PDF/R40446/R40446.13.pdf)

<sup>15</sup> Westat is a social science research company that has published a series of studies on E-Verify’s program data. They published the most recent external independent evaluation of E-Verify’s error rates, which was dated July 2012 (although this report was not released to the public until July 2013) and contained the numbers referenced above: *Evaluation of the Accuracy of E-Verify Findings* (Westat, July 2012) (hereinafter “Westat, July 2012”), p. x, <https://www.e-verify.gov/sites/default/files/everify/data/FindingsEVerifyAccuracyEval2012.pdf>. More current independent evaluation of E-Verify’s accuracy rates is urgently needed.

<sup>16</sup> H.R. 251, The Legal Workforce Act, would require 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 July 2025, total U.S. hires were 64.5 million. See Bureau of Labor Statistics, “Job Openings and Labor Turnover” <https://www.bls.gov/jlt/>. 64.5 million multiplied by 0.3 percent (the TNC rate from Westat 2012) equals 193,500 (about 193,000) 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 August 2025, the U.S. workforce was 170,778,000. See “Table A-1: Employment Status of the Civilian Population by Sex

These numbers are likely underestimates. Employers who audit their own E-Verify data report higher error rates than federal government estimates. For example, Los Angeles County reported that 2.7 percent of its E-Verify queries in 2008 and 2.0 percent in 2009 resulted in erroneous TNCs.<sup>17</sup>

Errors at the FNC stage are even more consequential. Westat estimated that 6 percent of FNCs were issued to authorized workers, meaning thousands of individuals were wrongly deemed ineligible for employment.<sup>18</sup> These figures likely understate the problem because many employers fail to notify workers of TNCs, causing mismatches to escalate to FNCs without the worker's knowledge. Assumptions in federal models – such as presuming 70 percent of workers receive proper notice – further limit the reliability of official accuracy estimates.<sup>19</sup>

The impact of these errors is not theoretical. In 2016, 62,000 U.S. citizens and authorized workers had to prove their work eligibility due to system mistakes.<sup>20</sup> An independent study found that between 2006 and 2016, more than 580,000 authorized employees received TNCs and successfully contested them.<sup>21</sup> These cases underscore a critical point: while E-Verify aims to prevent unauthorized employment, its inaccuracies impose real costs on lawful workers – costs that include job loss, administrative burdens, and, for low-wage workers, heightened vulnerability to mistreatment.

### **E-Verify Error Rates Disproportionately Harm Naturalized U.S. Citizens and Work-Authorized Noncitizens**

Evaluations of E-Verify consistently show that its errors do not affect all workers equally. Naturalized U.S. citizens and work-authorized noncitizens face significantly higher rates of erroneous tentative nonconfirmations (TNCs) than native-born citizens. Westat's analysis found that during April–June 2008, lawful permanent residents had an erroneous TNC rate of 1.0 percent, and other authorized noncitizens faced a staggering 5.3 percent rate – compared to just 0.3 percent for U.S. citizens.<sup>22</sup> Even among citizens, naturalized individuals were far more likely to be flagged incorrectly: 3.2 percent received a TNC versus only 0.1 percent of native-born

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and Age” (Bureau of Labor Statistics, U.S. Dept. of Labor, Sep. 5, 2025), <https://www.bls.gov/news.release/empsit.t01.htm>. 170,778,000 multiplied by 0.3 percent is 521,334 (about 521,000 workers) who would experience a TNC if E-Verify were used on the entire workforce (i.e., if every employer reverified its entire workforce).

<sup>17</sup> Marc Rosenblum, *E-Verify: Strengths, Weaknesses, and Proposals for Reform* (Migration Policy Institute, Feb. 2011), [www.migrationpolicy.org/pubs/E-Verify-Insight.pdf](http://www.migrationpolicy.org/pubs/E-Verify-Insight.pdf), p. 6.

<sup>18</sup> Westat, July 2012, p. x.

<sup>19</sup> Westat, July 2012, p. 16.

<sup>20</sup> David J. Bier, *E-Verify Has Delayed or Cost Half a Million Jobs for Legal Workers*, May 16, 2017 <https://www.cato.org/blog/e-verify-has-held-or-cost-jobs-half-million-legal-workers>

<sup>21</sup> David J. Bier, *E-Verify Has Delayed or Cost Half a Million Jobs for Legal Workers*, May 16, 2017 <https://www.cato.org/blog/e-verify-has-held-or-cost-jobs-half-million-legal-workers>

<sup>22</sup> Westat, July 2012, p. x, <https://www.e-verify.gov/sites/default/files/everify/data/FindingsEVerifyAccuracyEval2012.pdf>.

citizens.<sup>23</sup> These disparities largely stem from database lags and mismatches, such as Social Security records failing to reflect updated citizenship status.

The underlying problem is systemic. The Social Security Administration's Numident database, which E-Verify relies on, was found to contain discrepancies in approximately 17.8 million records – about 4.1 percent of all entries – raising particular concerns about incorrect citizenship information for foreign-born citizens and noncitizens.<sup>24</sup> These inaccuracies mean that lawful workers, especially those who are foreign-born, are far more likely to be misidentified as unauthorized.

Furthermore, Westat's 2012 evaluation confirmed that while error rates for U.S. citizens declined over time, there was little improvement for noncitizens.<sup>25</sup> Lawful permanent residents remain four times more likely than citizens to receive an erroneous TNC, and other authorized noncitizens are over twenty-seven times more likely. These errors compound existing workplace discrimination, as employers sometimes misuse E-Verify to prescreen applicants or demand specific immigration documents – practices that violate program rules and federal anti-discrimination laws.<sup>26</sup>

In short, E-Verify's inaccuracies disproportionately burden naturalized citizens and authorized noncitizens, creating barriers to employment and exposing these workers to discrimination and economic harm. Any discussion of expanding E-Verify must grapple with these inequities and their real-world consequences.

### **Correcting E-Verify Errors Places Burdens on Workers Who Have Done Nothing Wrong**

When E-Verify incorrectly flags a work-authorized employee as ineligible for employment, the burden of fixing the error falls squarely on the worker. Resolving a tentative nonconfirmation (TNC) or final nonconfirmation (FNC) requires navigating a burdensome contest process that may involve multiple government agencies (typically the Social Security Administration and sometimes the Department of Homeland Security), gathering original identity documents, and

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<sup>23</sup> Westat, July 2012, p. x, <https://www.e-verify.gov/sites/default/files/everify/data/FindingsEVerifyAccuracyEval2012.pdf>.

<sup>24</sup> Andorra Bruno, Electronic Employment Eligibility Verification, Congressional Research Service, p. 13 [https://www.congress.gov/crs\\_external\\_products/R/PDF/R40446/R40446.13.pdf](https://www.congress.gov/crs_external_products/R/PDF/R40446/R40446.13.pdf)

<sup>25</sup> Westat, July 2012, p. x, <https://www.e-verify.gov/sites/default/files/everify/data/FindingsEVerifyAccuracyEval2012.pdf>.

<sup>26</sup> Prescreening applicants with E-Verify is prohibited: "An employer that participates in E-Verify MUST NOT create a case for you in E-Verify before you accept an offer of employment and complete Form I-9." E-Verify, "Employee Rights and Responsibilities" <https://www.e-verify.gov/employees/employee-rights-and-responsibilities>. In addition, during the employment-authorization verification process, if an employer demands more or different documents than those required by law, or refuses to honor documents presented by the employee that on their face reasonably appear genuine, the conduct is an "unfair immigration-related practice" that is also referred to as "document abuse." 8 U.S.C.A. § 1324b(a)(6); 28 C.F.R. § 44.200(a). The Immigrant and Employee Rights Section (IER) of the Civil Rights Division of the U.S. Department of Justice enforce this provision.

traveling in person to government offices.<sup>27</sup> These steps can take days or even weeks. During this time, employers may pause onboarding, delay training, or remove the worker from the schedule, resulting in significant lost wages. For individuals with limited transportation, childcare responsibilities, or jobs that do not allow time off, the burden is even heavier.

If a TNC escalates to an FNC, the consequences are more severe: the worker may lose the job entirely and must start the hiring process over, proving the system was wrong – a process that is stressful, time-consuming, and financially costly. Even when workers contest errors promptly, resolution can take weeks or months, especially if they must file Privacy Act requests to identify inaccurate records. In 2012, of the thousands of workers who contested TNCs, it took longer than eight business days to resolve the TNC in over one-third of those cases.<sup>28</sup> These delays mean missed work, lost income, and added anxiety for employees who did nothing wrong. In short, even a small error rate translates into real harm because every mistaken nonconfirmation shifts the administrative and economic cost onto workers.

### **E-Verify Lacks an Appeal Mechanism for Workers Who Receive an Erroneous Final Nonconfirmation**

When a worker receives an erroneous Final Nonconfirmation (FNC), the absence of a true appeal mechanism creates serious and often irreversible harm. An FNC legally permits the employer to terminate the worker immediately, even if the worker is fully authorized to work. Because E-Verify does not provide a formal process for challenging or overturning an incorrect FNC, workers who are misidentified as unauthorized have no structured way to clear their records, correct the error, or prove their eligibility after the decision is made. This leaves them effectively blacklisted in the moment: they lose their job, and future employers using E-Verify may encounter the same unresolved data problem. Without an appeal process, the burden shifts entirely to the worker to navigate multiple federal agencies on their own – often without official guidance – and try to fix records that E-Verify itself has already treated as final. This can take weeks or months, during which the worker has no income and no guarantee that the issue will even be corrected. The lack of an appeals process therefore magnifies the consequences of every mistaken FNC, turning what should be a resolvable record error into job loss, financial instability, and lasting employment barriers.

### **Employer Misuse of E-Verify, Even When Unintentional, Can Harm Workers**

E-Verify was designed as a compliance tool to confirm employment eligibility, but employers often misuse the system in ways that harm workers – even when those workers are fully

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<sup>27</sup> See E-Verify “Further Action Notice” detailing all the steps an employee must take to resolve a mismatch <https://www.e-verify.gov/sites/default/files/everify/notices/SampleDualFurtherActionNotice.pdf>. Also see Tentative Nonconfirmations (Mismatches) <https://www.e-verify.gov/employers/verification-process/tentative-nonconfirmations-mismatches>.

<sup>28</sup> David J. Bier, E-Verify Has Delayed or Cost Half a Million Jobs for Legal Workers, May 16, 2017 <https://www.cato.org/blog/e-verify-has-held-or-cost-jobs-half-million-legal-workers>



authorized to work. These missteps, even when they stem from misunderstanding rather than malice, create real-world consequences that undermine job security and worker protections.

One common misuse is prescreening job applicants before a formal offer, a practice explicitly prohibited under E-Verify rules.<sup>29</sup> Employers sometimes run checks early to avoid interviewing candidates they suspect might lack work authorization, creating discriminatory barriers for lawful workers, particularly those perceived as foreign-born. Similarly, some employers demand specific immigration documents from noncitizen employees – such as permanent resident cards or employment authorization documents – while allowing U.S. citizens to present any acceptable document under I-9 rules. This selective application of documentation requirements, known as “document abuse”, violates federal anti-discrimination laws<sup>30</sup> and has resulted in enforcement actions and penalties.

Misuse also occurs after hiring. Employers may terminate or refuse to hire workers solely based on a Tentative Nonconfirmation (TNC), before the worker has had the opportunity to contest or resolve the mismatch with SSA or DHS – a practice explicitly prohibited by E-Verify rules.<sup>31</sup> Others delay onboarding, cut hours, or suspend pay while a case is pending, imposing financial hardship.<sup>32</sup> In some instances, employers treat a TNC or even a Final Nonconfirmation (FNC) as final without guiding workers through the resolution process, effectively shifting the entire administrative burden onto the employee. Some fail to re-submit corrected information after a mismatch is resolved, leaving errors in the system that can block future employment.

Collectively, these practices exploit procedural gaps in E-Verify and disproportionately harm noncitizens and naturalized citizens, who already face higher error rates. The result is lost wages, job instability, and unfair exclusion from the labor market. Expanding E-Verify without addressing these compliance gaps risks amplifying these harms and undermining the program’s stated purpose of ensuring lawful employment.

### **Employers Can Weaponize E-Verify to Coerce or Retaliate Against Workers Engaged in Protected Activity**

E-Verify is intended as a compliance tool, but employers have exploited it as a weapon against workers exercising their rights under labor and employment laws. This abuse often occurs during

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<sup>29</sup> “An employer that participates in E-Verify MUST NOT create a case for you in E-Verify before you accept an offer of employment and complete Form I-9.” E-Verify, “Employee Rights and Responsibilities” <https://www.e-verify.gov/employees/employee-rights-and-responsibilities>.

<sup>30</sup> 8 U.S.C.A. § 1324b(a)(6); 28 C.F.R. § 44.200(a).

<sup>31</sup> “An employer that participates in E-Verify MUST NOT... Terminate or take any other adverse action against you (such as denying work, delaying training, withholding pay, or otherwise assuming that you are not authorized to work) because of your decision to take action to resolve a mismatch or because your mismatch case is still pending with DHS or SSA.” E-Verify, “Employee Rights and Responsibilities” <https://www.e-verify.gov/employees/employee-rights-and-responsibilities>.

<sup>32</sup> U.S. Department of Justice Immigrant and Employee Rights Section, Identifying Possible E-Verify Related Employment Discrimination, <https://www.justice.gov/crt/case-document/file/1132551/dl?inline> (accessed Nov. 16, 2025).

union organizing efforts or workplace disputes, where immigration compliance becomes a pretext for intimidation or retaliation.

Employers may unlawfully demand re-verification or initiate new E-Verify cases after a worker asserts protected rights – such as filing complaints about workplace conditions or organizing with co-workers.<sup>33</sup> Selective enforcement of E-Verify when workers begin asserting rights creates a climate of fear, chilling workers from exercising their rights and making it harder – and riskier – for noncitizen workers to organize or demand better conditions.

*Ruprecht Company:* During union contract negotiations, Ruprecht enrolled in E-Verify after an ICE audit without bargaining with the union – a move the National Labor Relations Board (NLRB) ruled unlawful under the National Labor Relations Act.<sup>34</sup> The company compounded violations by transferring work from fired undocumented employees to contractors without bargaining, dealing directly with terminated workers about severance, and withholding lists of employees flagged by E-Verify. These actions were deemed coercive and anti-union, using immigration compliance as a smokescreen to undermine organizing efforts.

*Farm Fresh Company:* In another case, Farm Fresh fired four employees after running them through E-Verify following an attempt to form a union. The NLRB ordered the workers reinstated without E-Verify checks, finding the terminations retaliatory and unlawful. However, a federal judge later disagreed, creating legal uncertainty about whether E-Verify can be used post-hire in such contexts. This case highlights how employers may exploit E-Verify to retaliate against organizing workers, even when courts and labor boards conflict on remedies.

These examples demonstrate how E-Verify can be weaponized to intimidate or punish workers engaged in protected activities, undermining both labor rights and the integrity of the program. Without stronger safeguards and enforcement, E-Verify's misuse will continue to erode worker protections and amplify vulnerabilities for immigrant and foreign-born employees.

### **When Employers Misuse or Abuse E-Verify, There Are No Meaningful Mechanisms at DHS to Hold Them Accountable**

While formal mechanisms exist to address employer misuse of E-Verify, they are limited and largely ineffective in practice. The Department of Homeland Security (DHS), through USCIS, monitors compliance via account reviews, site visits, and desk audits. When violations occur – such as prescreening applicants, running checks on existing employees, or using E-Verify for

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<sup>33</sup> Employers may not run existing employees through E-Verify, absent a narrow exception that allows some employers with federal contracts to use E-Verify to conform the employment eligibility of existing employees. “An employer that participates in E-Verify MUST NOT... Use E-Verify to verify you if you are not a new hire.” E-Verify, “Employee Rights and Responsibilities” <https://www.e-verify.gov/employees/employee-rights-and-responsibilities>.

<sup>34</sup> *The Ruprecht Co.*, 366 NLRB No. 179 (N.L.R.B. Aug. 27, 2018).



retaliation – USCIS may issue warnings, require corrective actions, or refer cases to Immigration and Customs Enforcement (ICE) or the Department of Justice’s Immigrant and Employee Rights (IER) Section. Workers can also report violations through the E-Verify Employee Hotline, email, or DHS’s Office of Inspector General, and file discrimination complaints with IER under 8 U.S.C. §1324b.

Despite these options, enforcement is virtually nonexistent and not publicly reported. E-Verify itself cannot impose fines; the most common penalty is termination of system access, which may not deter misuse. Investigations often depend on workers coming forward – a process that is time-consuming, intimidating, and stressful. Even when USCIS identifies violations, referrals to ICE or DOJ do not guarantee prosecution or meaningful sanctions. Other agencies, such as the NLRB and Department of Labor, can intervene when misuse intersects with labor rights, but these remedies are also reactive, inconsistent, and not publicly reported.

The result is a system where employers face minimal consequences for misusing E-Verify, while workers bear the brunt of the harm – lost wages, job instability, and administrative burdens. Without stronger, proactive enforcement and meaningful penalties, E-Verify remains vulnerable to abuse, undermining its stated purpose of ensuring lawful employment.

### **Imposing E-Verify Mandates without Enacting Legalization Measures Will Push Immigrant Workers into the Informal Economy and Drive Down Labor Standards**

Mandatory E-Verify laws aim to curb unauthorized employment, but research shows they often drive workers into the informal economy, where wages are lower and protections are minimal. When states like Arizona and Mississippi adopted strict E-Verify mandates, undocumented workers who could not pass verification did not leave the labor market entirely – they shifted into “off-the-books” jobs paid in cash, lacking basic labor protections. These informal arrangements expose workers to wage theft, unsafe conditions, and threats of immigration enforcement, while allowing employers to evade minimum wage laws, overtime requirements, and tax obligations.

Evidence from state-level E-Verify mandates illustrate this dynamic. Studies found that after Arizona’s Legal Arizona Workers Act (LAWA) took effect, the noncitizen Hispanic immigrant population declined significantly, and many workers moved from formal employment into informal work.<sup>35</sup> Arizona’s mandate did not improve outcomes for low-skilled legal workers and may have reduced overall employment, consistent with a contraction in formal labor supply. Similarly, studies have found that state-level E-Verify mandates reduce hourly earnings for likely

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<sup>35</sup> Sarah Bohn, Magnus Lofstrom, Steven Raphael, Lessons from the 2007 Legal Arizona Workers Act, Public Policy Institute of California, March 2011, [https://www.ppic.org/wp-content/uploads/content/pubs/report/R\\_311MLR.pdf](https://www.ppic.org/wp-content/uploads/content/pubs/report/R_311MLR.pdf), Sarah Bohn, Magnus Lofstrom, Steven Raphael, Do E-Verify Mandates Improve Labor Market Outcomes of Low-Skilled Native and Legal Immigrant Workers?, IZA Institute of Labor Economics, October 2015, <https://www.iza.org/publications/dp/9420/do-e-verify-mandates-improve-labor-market-outcomes-of-low-skilled-native-and-legal-immigrant-workers>

unauthorized men and increase self-employment – an indicator of informal work.<sup>36</sup> For Mississippi, a 2024 study documented a 10% decrease in farmworker population after its E-Verify mandate, suggesting reduced formal hiring and greater reliance on shadow labor markets.<sup>37</sup>

These shifts have broader consequences for labor standards. Employers who hire off-the-books workers often cut costs by ignoring wage laws and safety regulations, depressing wages not only for undocumented workers but for all low-wage employees in affected sectors. Studies consistently show that E-Verify mandates correlate with increased subcontracting and day-labor arrangements, weakening collective bargaining and eroding job security as workers on formal payrolls have to compete with workers in the informal economy who have no choice but to accept lower wages and substandard conditions in order to remain employed.

In short, imposing E-Verify mandates without legalization measures does not eliminate unauthorized work – it pushes it underground, creating a dual labor market where exploitation becomes systemic and enforcement nearly impossible.

### **Pushing Immigrant Workers into the Informal Economy Drives Down Tax Revenue**

Mandatory E-Verify laws not only destabilize labor markets – they also erode state and federal tax revenues by pushing workers into the informal economy. When employers cannot legally retain undocumented workers, many shift these employees “off the books” into cash-based jobs to avoid detection. This transition removes workers from payroll systems, reducing contributions to income taxes, Social Security, and unemployment insurance, while leaving workers without safety nets.

Arizona’s experience under the LAWА offers a cautionary example. The law, which took effect in 2008 and was upheld by the U.S. Supreme Court, requires all employers to use E-Verify and imposes harsh penalties, including business license suspension for violations.<sup>38</sup> While intended to “turn off the job magnet,” LAWА instead fueled the growth of Arizona’s cash economy. In the first year of implementation, state income tax collections dropped by 13 percent compared to the prior year, even as sales tax collections fell only modestly – 2.5 percent for food and 6.8 percent for clothing.<sup>39</sup> Analysts concluded that workers were still earning and spending money but were no longer paying income taxes, signaling a shift to off-the-books employment. As Arizona

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<sup>36</sup> Pia M. Orrenius & Madeline Zavodny, Do state work eligibility verification laws reduce unauthorized immigration? IZA Journal of Migration, March 10, 2016 <https://izajodm.springeropen.com/articles/10.1186/s40176-016-0053-3>

<sup>37</sup> Kuan-Ming Huang, E-Verify and Its Implications for U.S. Agriculture, <https://www.choicesmagazine.org/choices-magazine/submitted-articles/e-verify-and-its-implications-for-us-agriculture>

<sup>38</sup> Tyler Moran, COSTLY AND INEFFECTIVE: What Arizona’s Experience with Mandatory E-Verify Teaches Us <https://www.nilc.org/wp-content/uploads/2015/12/e-verify-arizona-lessons-2011-05-26.pdf>

<sup>39</sup> Tyler Moran, COSTLY AND INEFFECTIVE: What Arizona’s Experience with Mandatory E-Verify Teaches Us <https://www.nilc.org/wp-content/uploads/2015/12/e-verify-arizona-lessons-2011-05-26.pdf>

economist Elliott Pollack observed, “What you’ve done, because of that law, is taken tax-paying people and shifted them off the tax rolls.”

The fiscal consequences extend beyond Arizona. A report from the Congressional Budget Office estimated that making E-Verify mandatory nationwide – without providing a path for unauthorized workers to become work-authorized – would drive more employers and workers into the informal economy, reducing Social Security payroll tax revenue by \$88 billion.<sup>40</sup> These losses compound state-level impacts, where immigrant workers contribute billions annually in taxes and consumer spending. Removing these contributions through policies that push workers underground undermines state budgets and economic stability.

In short, E-Verify mandates without legalization measures trade short-term enforcement optics for long-term fiscal harm. By shrinking the tax base and expanding the cash economy, these policies weaken public revenues while leaving workers more vulnerable to exploitation.

### **Small Employers Are the Least Likely to Be Enrolled in E-Verify and Will Carry the Greatest Administrative Burden Under a New E-Verify Mandate**

An E-Verify mandate would impose significant compliance burdens on employers, with the greatest impact falling on small businesses. Current enrollment patterns show that most E-Verify participants are medium- and large-sized firms with dedicated HR staff and systems to manage verification processes. Small businesses, by contrast, often lack specialized personnel and infrastructure, making compliance far more time-consuming and complex. A mandate would require these employers to verify every new hire, resolve Tentative Nonconfirmations (TNCs) and Final Nonconfirmations (FNCs), maintain detailed records, and respond to audits – all while continuing core business operations.

For small businesses, these requirements translate into real costs and operational strain. Unlike large companies that can absorb compliance tasks, small firms may need to invest in new technology, train staff, and even hire compliance personnel – an expensive proposition for businesses operating on thin margins. Surveys reveal that many small employers are not enrolled in E-Verify today, often citing lack of resources or inadequate internet access. In fact, small businesses are two and a half times more likely than large firms to report insufficient access to high-speed internet, a basic requirement for E-Verify participation.

While the government does not charge fees for E-Verify, employers incur setup and maintenance costs. Median setup costs for those reporting expenses are around \$100, and annual maintenance costs average \$300–\$350.<sup>41</sup> These figures understate the true burden for small businesses, which also face indirect costs such as lost productivity when resolving errors. In Arizona, where E-

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<sup>40</sup> Congressional Budget Office, Cost Estimate: H.R. 1772, Legal Workforce Act, Dec. 17, 2013, available at <https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/costestimate/hr17721.pdf>

<sup>41</sup> Andorra Bruno, Electronic Employment Eligibility Verification, Congressional Research Service, p. 19 [https://www.congress.gov/crs\\_external\\_products/R/PDF/R40446/R40446.13.pdf](https://www.congress.gov/crs_external_products/R/PDF/R40446/R40446.13.pdf)

Verify is mandatory, small business owners have reported that technical glitches and compliance steps take time away from core operations. Bloomberg Government estimated that if E-Verify had been mandatory nationwide in 2010, employers would have spent \$2.7 billion on compliance – with small businesses shouldering \$2.6 billion of that amount.

While large employers may absorb these requirements relatively smoothly, small businesses face disproportionate challenges under an E-Verify mandate. These include higher administrative costs, slower hiring, and increased exposure to penalties for mistakes – all of which could undermine efficiency and profitability in sectors already struggling with labor shortages.

### **Recent GAO Report Reveals Massive Lack of Compliance with the E-Verify Federal Contractor Rule, Underscoring the Negative Impacts that Would Result from Codifying the Rule**

A recent Government Accountability Office (GAO) report highlights systemic failures in enforcing the federal contractor E-Verify requirement, raising serious concerns about the implications of codifying this rule into law. Although federal contracts above certain thresholds include the FAR clause mandating E-Verify, compliance is far from universal. GAO found that of approximately 74,000 federal contract awards in FY 2021, only about 15 percent were reported as using E-Verify, despite contractual obligations requiring verification of all workers performing under the contract.<sup>42</sup> This gap reflects weak oversight: contracting officials from major agencies admitted they often do not check whether contractors are enrolled or actively using the system. DHS compounded the problem by halting quarterly compliance reports to agencies in 2022 due to data quality concerns, leaving agencies without reliable tools to monitor adherence.

The enforcement gaps are striking. Between 2020 and March 2023, USCIS terminated nearly 300 contractor accounts for misuse and over 5,000 for non-use, yet GAO found DHS lacked a fully functioning referral process to suspend or debar contractors whose access was revoked.<sup>43</sup> While DHS has begun implementing reforms – such as creating a referral process and collecting Unique Entity Identifiers to track enrollment – these measures remain incomplete. As a result, many contractors continue operating under federal contracts without using E-Verify, undermining the integrity of the requirement.

Codification of the E-Verify Federal Contractor Rule would also impose significant administrative burdens, particularly on small businesses that currently avoid E-Verify because they do not hold federal contracts. These firms would need to invest in technology, staff training, and compliance systems, navigate strict timelines for resolving Tentative Nonconfirmations (TNCs), and avoid discriminatory practices – all while facing heightened risk of penalties for errors. Codification could discourage small contractors from bidding on federal work, shift

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<sup>42</sup> U.S. Government Accountability Office, Federal Contracting: Agencies Can Better Monitor E-Verify Compliance, October 3, 2023. <https://www.gao.gov/products/gao-24-106219>

<sup>43</sup> U.S. Government Accountability Office, Federal Contracting: Agencies Can Better Monitor E-Verify Compliance, October 3, 2023. <https://www.gao.gov/products/gao-24-106219>

competitive advantages to larger firms, and exacerbate labor shortages in sectors reliant on small businesses.

In short, GAO's findings reveal that the current mandate is not effectively enforced, and codifying it without addressing systemic gaps and providing compliance support could amplify costs, risks, and inequities across the federal contracting landscape.

### **E-Verify Error Rates Mean Participating Employers Are Still Vulnerable to ICE Worksite Raids and I-9 Audits, Causing Workforce Disruptions and Associated Liabilities**

Employers often assume that enrolling in E-Verify shields them from enforcement actions such as ICE worksite raids, I-9 audits, and fines. In reality, E-Verify offers no legal safe harbor. The system only verifies that documents match government databases – it does not confirm that the person presenting those documents is the rightful holder. This design flaw leaves E-Verify vulnerable to identity theft and document fraud, allowing unauthorized workers to pass verification even when employers “do everything right.” As a result, companies using E-Verify have still faced large-scale enforcement actions, operational shutdowns, and reputational damage.

High-profile cases underscore that this problem is common, not rare. ICE raids at Mississippi poultry plants – located in a state that mandates E-Verify – revealed hundreds of undocumented workers on payroll.<sup>44</sup> Similarly, Fresh Mark, a company enrolled in E-Verify and even participating in ICE's IMAGE compliance program, saw 150 workers detained during a raid.<sup>45</sup> Bryant Preserving in Arkansas faced a criminal investigation and worker arrests despite claiming E-Verify use.<sup>46</sup> Howard Industries<sup>47</sup> and Swift & Co., both enrolled in E-Verify, were raided in earlier enforcement actions that resulted in hundreds of arrests. These examples demonstrate that participation in E-Verify does not prevent liability or disruption when identity fraud or systemic weaknesses allow unauthorized workers to slip through.

*Glenn Valley Foods:* The recent raid at Glenn Valley Foods in Omaha, Nebraska, illustrates the risk vividly. ICE detained 70–80 workers – nearly half the plant's workforce – even though the company had used E-Verify “for years” to check work

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<sup>44</sup> Washington Post, These poultry plants used E-Verify. They still hired hundreds of undocumented workers. August 16, 2019 <https://www.washingtonpost.com/business/2019/08/16/these-poultry-plants-used-e-verify-they-still-hired-hundreds-undocumented-workers/>

<sup>45</sup> Julie Cook Ramirez, Fresh Mark Increase in ICE Raids Concerns Employers, HR Executive, September 24, 2018 <http://hrexecutive.com/increase-in-ice-raids-concerns-employers/>

<sup>46</sup> Public News Service, Arkansas Factory Raid Disrupts Communities, Immigrant Advocates Say, September 17, 2018 <https://www.publicnewsservice.org/2018-09-17/immigrant-issues/arkansas-factory-raid-disrupts-communities-immigrant-advocates-say/a63982-1>

<sup>47</sup> NBC News, Immigration raid spotlights rift of have-nots, January 24, 2009 <https://www.nbcnews.com/id/wbna28816336>

authorization.<sup>48</sup> According to reports, ICE agents told company officials “the system is broken,” citing widespread identity theft among employees. Despite compliance efforts, the raid decimated operations, reducing capacity to just 30 percent and causing severe financial and reputational harm. This case highlights that E-Verify does not immunize employers from enforcement actions or workforce disruptions.

E-Verify provides compliance support but not protection. Employers remain exposed to audits, raids, and penalties because the system cannot detect identity fraud or guarantee ongoing work authorization. For businesses – especially those in high-risk sectors like food processing and manufacturing – the consequences include lost productivity, legal liability, and lasting damage to workforce stability.

### **Even the Trump Administration Recognizes that E-Verify is Unreliable, Leaving Employers in an Untenable Position**

Despite promoting E-Verify as a cornerstone of immigration enforcement, the Trump administration has repeatedly acknowledged its limitations, leaving employers in a difficult position. In public statements, DHS has conceded that E-Verify is “susceptible to identity fraud” because it cannot always photo-match state-issued IDs, particularly in states that do not share license photo data. At the same time, the administration has intensified I-9 enforcement, increasing audits and penalties for paperwork violations. This dual approach creates conflicting guidance: employers are urged – or even required – to use E-Verify, yet told that reliance on it alone does not protect against enforcement. For businesses, especially those with limited compliance resources, this means higher risk and greater operational strain without clear assurance of immunity.

Employers now face a compliance paradox. They must adopt E-Verify to demonstrate good faith, while simultaneously maintaining rigorous I-9 protocols, re-verifying work authorization when status changes occur, and preparing for audits. Legal experts warn that this “double bind” forces employers to shoulder significant costs and liability. Doing less than what DHS expects risks enforcement; doing more than what the law requires can expose businesses to discrimination claims. For small employers without dedicated HR teams, these pressures create an untenable compliance environment.

*Old Orchard Beach, Maine Police Department:* This tension was vividly illustrated in the case of Jon Luke Evans, a reserve police officer arrested by ICE for overstaying his visa and attempting to purchase a firearm – despite having been cleared by E-Verify.<sup>49</sup> DHS criticized the town for “reckless reliance” on the system, arguing that E-Verify is a

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<sup>48</sup> CBS Evening News, Employers rely on E-Verify system, but critics say it's broken by design, July 16, 2025 <https://www.facebook.com/CBSEveningNews/videos/employers-rely-on-e-verify-system-but-critics-say-its-broken-by-design/1284111926475472/>

<sup>49</sup> Federal E-Verify system under scrutiny after Old Orchard Beach police hiring incident, WMTW-TC, July 31, 2025 <https://www.youtube.com/watch?v=Ghpp4Y3Chow>



“proven tool” but not infallible and cannot replace deeper background checks. Local officials pushed back, noting they relied on E-Verify “because that’s what we’ve been given” and questioned what alternative system exists. Employer-side advocates called DHS’s stance “outrageous,” emphasizing that E-Verify was designed to help employers show good faith compliance. The incident underscores a systemic flaw: E-Verify vets documents, not identities, leaving employers vulnerable to enforcement actions even when they follow federal guidance.

The Trump administration’s mixed messaging – promoting E-Verify while admitting its shortcomings – creates a compliance trap for employers. Mandated use of a flawed tool without safe harbor protections forces businesses to absorb legal and reputational risks, with no clear path to certainty.

### **Conclusion: The Looming Crisis Under a Federal E-Verify Mandate**

If Congress enacts a nationwide E-Verify mandate without creating legal pathways for workers to obtain employment authorization, the consequences for workers, employers, and the broader economy will be severe. Employers would be required to screen all new hires through a system widely acknowledged as flawed – susceptible to identity theft and prone to errors that wrongly deny work authorization to lawful employees. For workers, this means increased job loss, discrimination, and a surge in off-the-books employment as undocumented individuals shift to informal labor markets, driving down wages and working conditions across entire sectors. For employers – especially small businesses – the mandate would impose steep compliance costs, operational delays, and heightened legal risk, all without offering safe harbor protections from raids, audits, or penalties even when they follow the rules. Even diligent E-Verify users remain vulnerable to enforcement actions, as recent raids and penalties demonstrate.

The ripple effects on the economy could be profound. Industries reliant on immigrant labor, such as agriculture, construction, and hospitality, would face acute labor shortages, forcing production cuts and price increases. Meanwhile, enforcement actions would continue to disrupt businesses, as E-Verify does not prevent unauthorized hiring when identity fraud is involved. Without a complementary legal framework providing a pathway to permanent immigration status, mandating E-Verify amounts to shutting the door on millions of workers while leaving employers with no viable alternative. This policy gap risks destabilizing labor markets, undermining compliance, and accelerating the growth of an underground economy, creating a crisis that harms workers, businesses, and consumers alike.

### **Policy Recommendations on Behalf of the National Immigration Law Center**

#### **1. Do Not Enact an E-Verify Mandate Without a Legal Pathway for Workers and Strong Worker Protections**

Congress should reject any proposal to mandate E-Verify nationwide unless it is paired with a

legal pathway to full U.S. citizenship for undocumented workers currently in the U.S. and robust labor protections for all workers. These protections must include clear anti-retaliation provisions, safeguards against employer misuse such as prescreening or discriminatory document demands, and a formal appeals process for workers wrongly flagged by the system. Without these measures, a mandate would destabilize labor markets, push workers into the underground economy, and harm industries already facing severe labor shortages, creating widespread hardship for both workers and employers.

## **2. Mandate Transparency Regarding E-Verify Errors and Abuse**

Congress should direct independent research into the persistent inaccuracies in E-Verify, including erroneous Tentative Nonconfirmations and Final Nonconfirmations that wrongly flag U.S. citizens and work-authorized noncitizens. These errors lead to job loss, wage disruption, and discrimination, yet the system has not undergone sufficient external evaluation. A comprehensive study is essential to identify root causes and ensure accountability before expanding the program. In addition, E-Verify should publicly report on complaints received from workers regarding employer misuse and actions taken to hold employers accountable.

## **3. Fix the System Before Rolling Out Any Mandate**

Congress must require DHS to address E-Verify's systemic flaws – such as vulnerability to identity fraud, database mismatches, and lack of an appeals process – before considering any nationwide mandate. Implementing a flawed system at scale would be irresponsible governance, exposing employers to legal risk and workers to wrongful job loss. A mandate should only follow after the program is able to demonstrate proven improvements and safeguards are in place.