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IMMIGRATION ENFORCEMENT

Preliminary Observations on Employment Verification and Worksite Enforcement Efforts

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Homeland Security and Justice

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Highlights

Highlights of GAO-05-822T, testimony before the Subcommittee on Immigration, Border Security, and Claims, Committee on the Judiciary, House of Representatives

IMMIGRATION ENFORCEMENT

Preliminary Observations on Employment Verification and Worksite Enforcement Efforts

Why GAO Did This Study

The opportunity for employment is one of the most important magnets attracting illegal aliens to the United States. The Immigration Reform and Control Act (IRCA) of 1986 established an employment eligibility verification process and a sanctions program for fining employers for noncompliance. Few modifications have been made to the verification process and sanctions program since 1986, and immigration experts state that a more reliable verification process and a strengthened worksite enforcement capacity are needed to help deter illegal immigration. In this testimony, GAO provides preliminary observations from its ongoing assessment of (1) the current employment verification process and (2) U.S. Immigration and Customs Enforcement's (ICE) priorities and resources for the worksite enforcement program and the challenges it faces in implementing that program.

What GAO Found

The current employment verification (Form I-9) process is based on employers' review of documents presented by new employees to prove their identity and work eligibility. On the Form I-9, employers certify that they have reviewed documents presented by their employees and that the documents appear genuine and relate to the individual presenting the documents. However, document fraud (use of counterfeit documents) and identity fraud (fraudulent use of valid documents or information belonging to others) have undermined the employment verification process by making it difficult for employers who want to comply with the process to ensure they hire only authorized workers and easier for unscrupulous employers to knowingly hire unauthorized workers. In addition, the number and variety of documents acceptable for proving work eligibility has hindered employer verifications efforts. In 1998, the former Immigration and Naturalization Service (INS), now part of the Department of Homeland Security (DHS), proposed revising the Form I-9 process, particularly to reduce the number of acceptable work eligibility documents, but DHS has not yet finalized the proposal. The Basic Pilot Program, a voluntary program through which participating employers electronically verify employees' work eligibility, shows promise to enhance the current employment verification process, help reduce document fraud, and assist ICE in better targeting its worksite enforcement efforts. Yet, several current weaknesses in the pilot program's implementation, such as its inability to detect identity fraud and DHS delays in entering data into its databases, could adversely affect increased use of the pilot program, if not addressed.

The worksite enforcement program has been a low priority under both INS and ICE. For example, in fiscal year 1999 INS devoted about 9 percent of its total investigative agents' time to worksite enforcement, while in fiscal year 2003 it allocated about 4 percent. ICE officials told us that the agency has experienced difficulties in proving employer violations and setting and collecting fine amounts that meaningfully deter employers from knowingly hiring unauthorized workers. In addition, INS and then ICE shifted its worksite enforcement focus to critical infrastructure protection after September 11, 2001.

www.gao.gov/cgi-bin/getrpt?GAO-05-822T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Richard M. Stana at (202) 512-8777 or stanar@gao.gov.

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to be here today to participate in this hearing on worksite enforcement and employer sanctions efforts. As we and others have reported in the past, the opportunity for employment is one of the most important magnets attracting illegal aliens to the United States. To help address this magnet, in 1986 Congress passed the Immigration Reform and Control Act (IRCA),[1] which made it illegal for individuals and entities to knowingly hire, continue to employ, or recruit or refer for a fee unauthorized workers. The act established a two-pronged approach for helping to limit the employment of unauthorized workers: (1) an employment verification process through which employers verify all newly hired employees' work eligibility and (2) a sanctions program for fining employers who do not comply with the act. Efforts to enforce these sanctions are referred to as worksite enforcement and are conducted by U.S. Immigration and Customs Enforcement (ICE).

As the U.S. Commission on Immigration Reform reported, immigration contributes to the U.S. national economy by providing workers for certain labor-intensive industries and contributing to the economic revitalization of some communities.[2] Yet, the commission also noted that immigration, particularly illegal immigration, can have adverse consequences by helping to depress wages for low-skilled workers and creating net fiscal costs for state and local governments. Following the passage of IRCA, the U.S. Commission on Immigration Reform and various immigration experts have concluded that deterring illegal immigration requires, among other things, strategies that focus on disrupting the ability of illegal immigrants to gain employment through a more reliable employment eligibility verification process and a more robust worksite enforcement capacity. In particular, the commission report and other studies have found that the single most important step that could be taken to reduce unlawful migration is the development of a more effective system for verifying work authorization. In the nearly 20 years since passage of IRCA, the employment eligibility verification process and worksite enforcement program have remained largely unchanged. Moreover, in previous work, we reported that employers of unauthorized aliens faced little likelihood that the

[1]P.L. 99-603, 8 U.S.C. 1324a et seq.

[2]U.S. Commission on Immigration Reform, *Becoming an American: Immigration and Immigrant Policy* (Washington, D.C: September 1997).

Immigration and Naturalization Service (INS)[3] would investigate, fine, or criminally prosecute them, a circumstance that provides little disincentive for employers who want to circumvent the law.[4]

My testimony today is drawn from our ongoing work for this subcommittee to assess the employment verification process and ICE's worksite enforcement program. Specifically, I will discuss our preliminary observations on (1) the current employment verification process and (2) ICE's priorities and resources for the worksite enforcement program and the challenges it faces in implementing that program.

We developed these preliminary observations by reviewing federal laws and information obtained from ICE, U.S. Citizenship and Immigration Services (CIS), and Social Security Administration (SSA) officials in headquarters and selected field locations. We examined regulations, guidance, past GAO reports, and other studies on the employment verification process and the worksite enforcement program. We also analyzed the results and examined the methodology of an independent evaluation of the Basic Pilot Program, an automated system through which employers electronically check employees' work eligibility information against information in Department of Homeland Security (DHS) and SSA databases, conducted by the Institute for Survey Research at Temple University and Westat in June 2004.[5] Furthermore, we analyzed data on employer use of the Basic Pilot Program and on worksite enforcement and assessed the data reliability by reviewing them for accuracy and completeness, interviewing agency officials knowledgeable about the data, and examining documentation on how the data are entered, categorized, and verified in the databases. We determined that the independent evaluation and these data were sufficiently reliable for the purposes of our review. We conducted the work reflected in this statement from September 2004 through June 2005 in accordance with generally accepted

[3]In March 2003, INS was merged into the Department of Homeland Security, and its immigration functions were divided between U.S. Citizenship and Immigration Services, U.S. Immigration and Customs Enforcement, and U.S. Customs and Border Protection. U.S. Immigration and Customs Enforcement is responsible for managing and implementing the worksite enforcement program.

[4]GAO, *Illegal Aliens: Significant Obstacles to Reducing Unauthorized Alien Employment Exist*, GAO/GGD-99-33 (Washington, D.C.: Apr. 2, 1999).

[5]Institute for Survey Research and Westat, *Findings of the Basic Pilot Program Evaluation* (Washington, D.C.: June 2004).

government auditing standards. We plan to complete our analysis and prepare a report for issuance later this summer.

Summary

The employment verification process is primarily based on employers' review of work eligibility documents presented by new employees, but various weaknesses, such as the process' vulnerability to fraud, have undermined this process. Employers certify that they have reviewed documents presented by their employees and that the documents appear genuine and relate to the individual presenting the documents. However, document fraud (use of counterfeit documents) and identity fraud (fraudulent use of valid documents or information belonging to others) have made it difficult for employers who want to comply with the employment verification process to ensure that they hire only authorized workers and have made it easier for unscrupulous employers to knowingly hire unauthorized workers. In addition, the large number and variety of documents acceptable for proving work eligibility have hindered employers' verification efforts. In 1998, the former INS proposed revising the verification process and reducing the number of acceptable work eligibility documents; that proposal was never acted upon. DHS, however, at the direction of Congress, introduced the Basic Pilot Program, an automated system for employers to electronically check employees' work eligibility information with information in DHS and SSA databases, that may enhance this process. This program shows promise to help reduce document fraud and assist ICE in better targeting its worksite enforcement efforts. Yet, a number of current weaknesses in the pilot program's implementation, including its inability to detect identity fraud and DHS delays in entering data into its databases, could adversely affect increased use of the pilot program, if not addressed. In addition, CIS officials told us the current Basic Pilot Program may not be able to complete timely verifications if the number of employers using the program significantly increased. In fiscal year 2004, about 2,300 employers actively used the Basic Pilot Program.

Under both INS and ICE, worksite enforcement has been a low priority. In fiscal year 1999, INS devoted about 240 full-time equivalents[6] (or about 9 percent of its total investigative agent workyears) to worksite enforcement, while in fiscal year 2003 it devoted about 90 full-time equivalents (or about 4 percent of total agent workyears). Furthermore,

[6]One full-time equivalent is equal to one workyear or 2,080 non-overtime hours.

the number of notices of intent to fine issued to employers for knowingly hiring unauthorized workers or improperly completing employment verification forms decreased from 417 in fiscal year 1999 to 3 in fiscal year 2004. According to ICE officials, the agency has experienced difficulties in proving employer violations and in setting and collecting fine amounts that meaningfully deter employers from knowingly hiring unauthorized workers. In addition, after September 11, 2001, INS and then ICE almost exclusively focused worksite enforcement resources on identifying and removing unauthorized workers from critical infrastructure sites, such as airports and nuclear power plants.

Background

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)[7] of 1996 required INS and SSA to operate three voluntary pilot programs to test electronic means for employers to verify an employee's eligibility to work, one of which was the Basic Pilot Program.[8] The Basic Pilot Program was designed to test whether pilot verification procedures could improve the existing employment verification process by reducing (1) false claims of U.S. citizenship and document fraud; (2) discrimination against employees; (3) violations of civil liberties and privacy; and (4) the burden on employers to verify employees' work eligibility.

The Basic Pilot Program provides participating employers with an electronic method to verify their employees' work eligibility. Employers may participate voluntarily in the Basic Pilot Program, but are still required to complete Forms I-9[9] for all newly hired employees in accordance with IRCA. After completing the forms, these employers query the pilot program's automated system by entering employee information provided on the forms, such as name and social security number, into the pilot Web site within 3 days of the employees' hire date. The pilot program

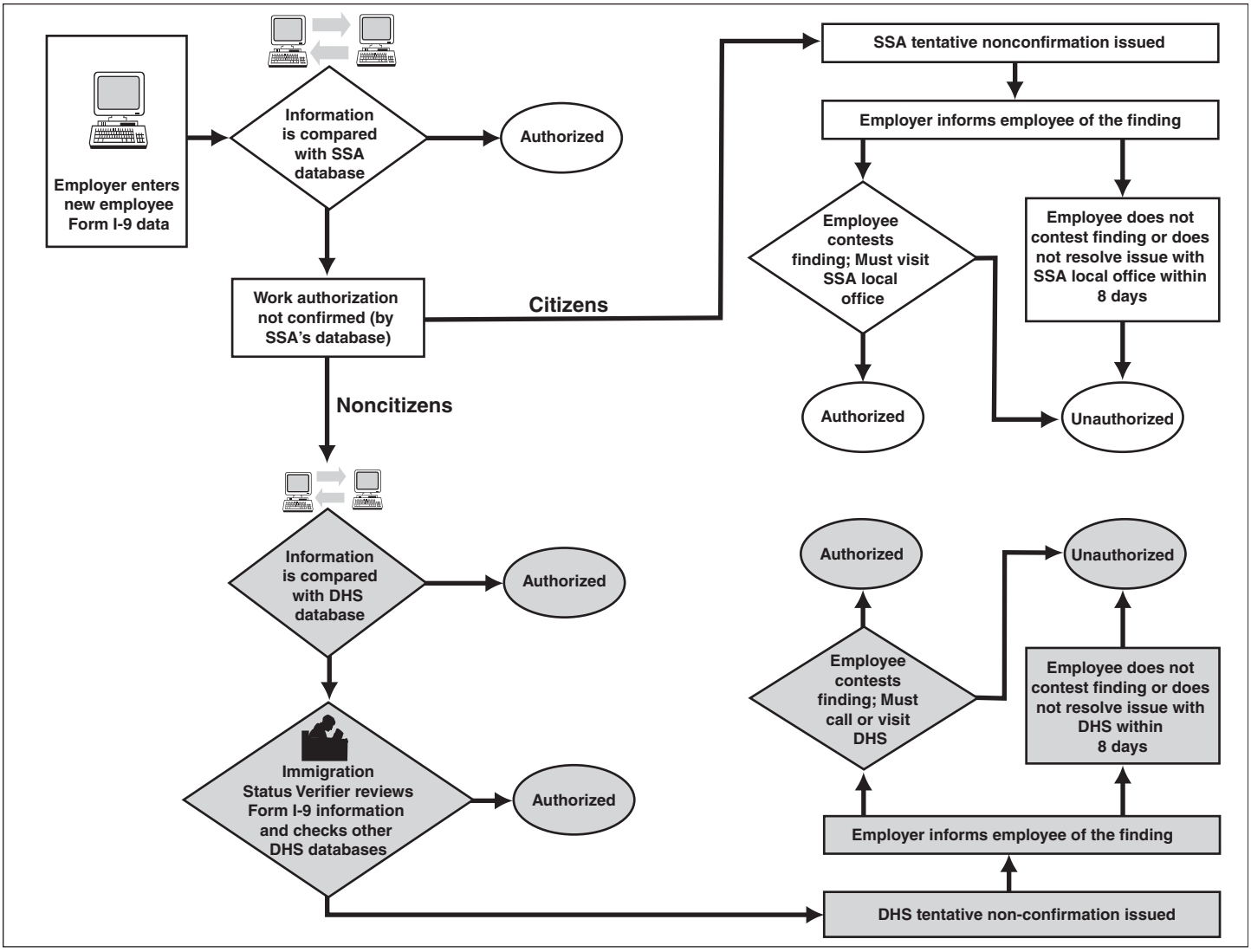
[7]IIRIRA of 1996 was enacted within a larger piece of legislation, the Omnibus Consolidated Appropriations Act, 1997, P. L. 104-208.

[8]The other two pilot programs mandated by IIRIRA—the Citizen Attestation Verification Pilot Program and the Machine-Readable Document Pilot Program—were discontinued in 2003 due to technical difficulties and unintended consequences identified in evaluations of the programs. See Institute for Survey Research and Westat, *Findings of the Citizen Attestation Verification Pilot Program Evaluation* (Washington, D.C.: Apr. 2003) and Institute for Survey Research and Westat, *Findings of the Machine-Readable Document Pilot Program Evaluation* (Washington, D.C.: May 2003).

[9]The Form I-9 is completed by employers in verifying the work eligibility of all newly hired employees.

then electronically matches that information against information in SSA and, if necessary, DHS databases to determine whether the employee is eligible to work, as shown in figure 1. The Basic Pilot Program electronically notifies employers whether their employees' work authorization was confirmed. Those queries that the DHS automated check cannot confirm are referred to DHS immigration status verifiers who check employee information against information in other DHS databases.

Figure 1: Basic Pilot Program Verification Process



Social Security Administration

Department of Homeland Security

Source: GAO analysis based CIS information.

In cases when the pilot system cannot confirm an employee's work authorization status either through the automatic check or the check by an immigration status verifier, the system issues the employer a tentative

nonconfirmation of the employee's work authorization status. In this case, the employers must notify the affected employees of the finding, and the employees have the right to contest their tentative nonconfirmations by contacting SSA or CIS to resolve any inaccuracies in their records within 8 days. During this time, employers may not take any adverse actions against those employees, such as limiting their work assignments or pay. Employers are required to either immediately terminate the employment, or notify DHS of the continued employment, of workers who do not successfully contest the tentative nonconfirmation and those who the pilot program finds are not work-authorized.

Various Weaknesses Have Undermined the Employment Verification Process, but Opportunities Exist to Enhance It

Current Employment Verification Process Is Based on Employers' Review of Documents

In 1986, IRCA established the employment verification process based on employers' review of documents presented by employees to prove identity and work eligibility. On the Form I-9, employees must attest that they are U.S. citizens, lawfully admitted permanent residents, or aliens authorized to work in the United States. Employers must then certify that they have reviewed the documents presented by their employees to establish identity and work eligibility and that the documents appear genuine and relate to the individual presenting them. In making their certifications, employers are expected to judge whether the documents presented are obviously counterfeit or fraudulent. Employers are deemed in compliance with IRCA if they have followed the Form I-9 process, including when an unauthorized alien presents fraudulent documents that appear genuine.

Form I-9 Process Is Vulnerable to Document and Identity Fraud

Since passage of IRCA in 1986, document and identity fraud have made it difficult for employers who want to comply with the employment verification process to ensure they hire only authorized workers. In its 1997 report to Congress, the Commission on Immigration Reform noted that the widespread availability of false documents made it easy for unauthorized aliens to obtain jobs in the United States. In past work, we

reported that large numbers of unauthorized aliens have used false documents or fraudulently used valid documents belonging to others to acquire employment, including at critical infrastructure sites like airports and nuclear power plants.[10] In addition, although studies have shown that the majority of employers comply with IRCA and try to hire only authorized workers, some employers knowingly hire unauthorized workers, often to exploit the workers' low cost labor. For example, the Commission on Immigration Reform reported that employers who knowingly hired illegal aliens often avoided sanctions by going through the motions of compliance while accepting false documents.

The Number and Variety of Acceptable Documents Hinders Employer Verification Efforts

The number and variety of documents that are acceptable for proving work eligibility have complicated employer verification efforts under IRCA. Following the passage of IRCA in 1986, employees could present 29 different documents to establish their identity and/or work eligibility. In a 1997 interim rule, INS reduced the number of acceptable work eligibility documents from 29 to 27.[11] The interim rule implemented changes to the list of acceptable work eligibility documents mandated by IIRIRA and was intended to serve as a temporary measure until INS issued final rules on modifications to the Form I-9. Since the passage of IRCA, we and others have reported on the need to reduce the number of acceptable work eligibility documents to make the employment verification process simpler and more secure.[12] In 1998, INS proposed a further reduction in the number of acceptable work eligibility documents to 14, but the proposed rule has not been finalized. According to DHS officials, the department is currently assessing possible revisions to the Form I-9 process, including reducing the number of acceptable work eligibility documents, but has not established a target time frame for completing this assessment and issuing regulations on Form I-9 changes.

[10]GAO/GGD-99-33, and GAO, *Overstay Tracking: A Key Component of Homeland Security and a Layered Defense*, GAO-04-82 (Washington, D.C.: May 21, 2004).

[11]Eight of these documents establish both identity and employment eligibility (e.g., U.S. passport or permanent resident card); 12 documents establish identity only (e.g., driver's license); and 7 documents establish employment eligibility only (e.g., social security card).

[12]See GAO/GGD-99-33, and U.S. Senate, Committee on the Judiciary, Subcommittee on Immigration and Refugee Affairs, *Options for an Improved Employment Verification System* (Washington, D.C.: Sept. 23, 1992).

The Basic Pilot Program Shows Promise to Enhance Employment Verification, but Challenges Exist to Increased Use

Various immigration experts have noted that the most important step that could be taken to reduce illegal immigration is the development of a more effective system for verifying work authorization. In particular, the Commission on Immigration Reform concluded that the most promising option for verifying work authorization was a computerized registry based on employers' electronic verification of an employee's social security number with records on work authorization for aliens. The Basic Pilot Program, which is currently available on a voluntary basis to all employers in the United States, operates in a similar way to the computerized registry recommended by the commission, and shows promise to enhance employment verification and worksite enforcement efforts. Only a small portion—about 2,300 in fiscal year 2004—of the approximately 5.6 million employer firms nationwide actively used the pilot program.[13]

The Basic Pilot Program enhances the ability of participating employers to reliably verify their employees' work eligibility and assists participating employers with identification of false documents used to obtain employment by comparing employees' Form I-9 information with information in SSA and DHS databases. If newly hired employees present counterfeit documents, the pilot program would not confirm the employees' work eligibility because their employees' Form I-9 information, such as the false name or social security number, would not match SSA and DHS database information when queried through the Basic Pilot Program.

Although ICE has no direct role in monitoring employer use of the Basic Pilot Program and does not have direct access to program information, which is maintained by CIS, ICE officials told us that program data could indicate cases in which employers do not follow program requirements and therefore would help the agency better target its worksite

[13]The number of employers who actively used the program in fiscal year 2004 includes a small number of employers who switched between two versions of the program and, as a result, were counted twice as active users. CIS is not able to easily determine which employers were counted twice. In addition, the approximately 2,300 employers who actively used the pilot program in fiscal year 2004 do not reflect the number of worksites or individual business establishments using the program. The about 5.6 million firms in the United States were the number of firms in 2002, which is the most current data available. Under the Basic Pilot Program, one employer may have multiple worksites that use the pilot program. For example, a hotel chain could have multiple individual hotels using the Basic Pilot Program, but the hotel chain would represent one employer using the pilot program. A firm is a business organization consisting of one or more domestic establishments in the same state and industry that were specified under common ownership or control.

enforcement efforts toward those employers. For example, the Basic Pilot Program's confirmation of numerous queries of the same social security number could indicate that a social security number is being used fraudulently or that an unscrupulous employer is knowingly hiring unauthorized workers by accepting the same social security number for multiple employees. ICE officials noted that, in a few cases, they have requested and received pilot program data from CIS on specific employers who participate in the program and are under ICE investigation. However, CIS officials told us that they have concerns about providing ICE broader access to Basic Pilot Program information because it could create a disincentive for employers to participate in the program, as employers may believe that they are more likely to be targeted for a worksite enforcement investigation as a result of program participation. According to ICE officials, mandatory employer participation in the Basic Pilot Program would eliminate the concern about sharing data and could help ICE better target its worksite enforcement efforts on employers who try to circumvent program requirements. Moreover, these officials told us that mandatory use of an automated system like the pilot program could limit the ability of employers who knowingly hired unauthorized workers to claim that the workers presented false documents to obtain employment, which could assist ICE agents in proving employer violations of IRCA.

The Basic Pilot Program may enhance the employment verification process and a mandatory program could assist ICE in targeting its worksite enforcement efforts. However, weaknesses exist in the current program. For example, the current Basic Pilot Program cannot help employers detect identity fraud. If an unauthorized worker presents valid documentation that belongs to another person authorized to work, the Basic Pilot Program would likely find the worker to be work-authorized. Similarly, if an employee presents counterfeit documentation that contains valid information and appears authentic, the pilot program may verify the employee as work-authorized. DHS officials told us that the department is currently considering possible ways to enhance the Basic Pilot Program to help it detect cases of identity fraud, for example, by providing a digitized photograph associated with employment authorization information presented by an employee.

Delays in the entry of information on arrivals and employment authorization into CIS databases can lengthen the pilot program verification process for some secondary verifications. Although the majority of pilot program queries entered by employers are confirmed via the automated SSA and DHS verification checks, about 15 percent of queries authorized by DHS required secondary verifications in fiscal year

2004.[14] According to CIS, cases referred for secondary verification are typically resolved within 24 hours, but a small number of cases take longer, sometimes up to 2 weeks, due to, among other things, delays in entry of employment authorization information into CIS databases. Secondary verifications lengthen the time needed to complete the employment verification process and could harm employees because employers might reduce those employees' pay or restrict training or work assignments, which are prohibited under pilot program requirements, while waiting for verification of their work eligibility.[15] DHS has taken steps to increase the timeliness and accuracy of information entered into databases used as part of the Basic Pilot Program and reports, for example, that data on new immigrants are now typically available for verification within 10 to 12 days of an immigrant's arrival in the United States while, previously, the information was not available for up to 6 to 9 months after arrival.[16]

According to CIS officials, current CIS staff may not be able to complete timely secondary verifications if the number of employers using the program significantly increased. In particular, these officials said that if a significant number of new employers registered for the program or if the program were mandatory for all employers, additional staff would be needed to maintain timely secondary verifications. Currently, CIS has approximately 38 Immigration Status Verifiers allocated for completing Basic Pilot Program secondary verifications, and these verifiers reported that they are able to complete the majority of manual verification checks within their target time frame of 24 hours. However, CIS estimated that even a relatively small increase in the number of employers using the program would significantly slow the secondary verification process and strain existing resources allocated for the program.

[14]In fiscal year 2004, only about 10 percent of total Basic Pilot Program queries were referred to DHS for verification. Of these queries referred to DHS for verification, about 85 percent were confirmed via the DHS automated verification check.

[15]Institute for Survey Research and Westat.

[16]DHS, *Report to Congress on the Basic Pilot Program* (Washington, D.C.: June 2004).

Low Priority and Implementation Challenges Have Hindered Worksite Enforcement Efforts

Worksite Enforcement Remains a Low Priority

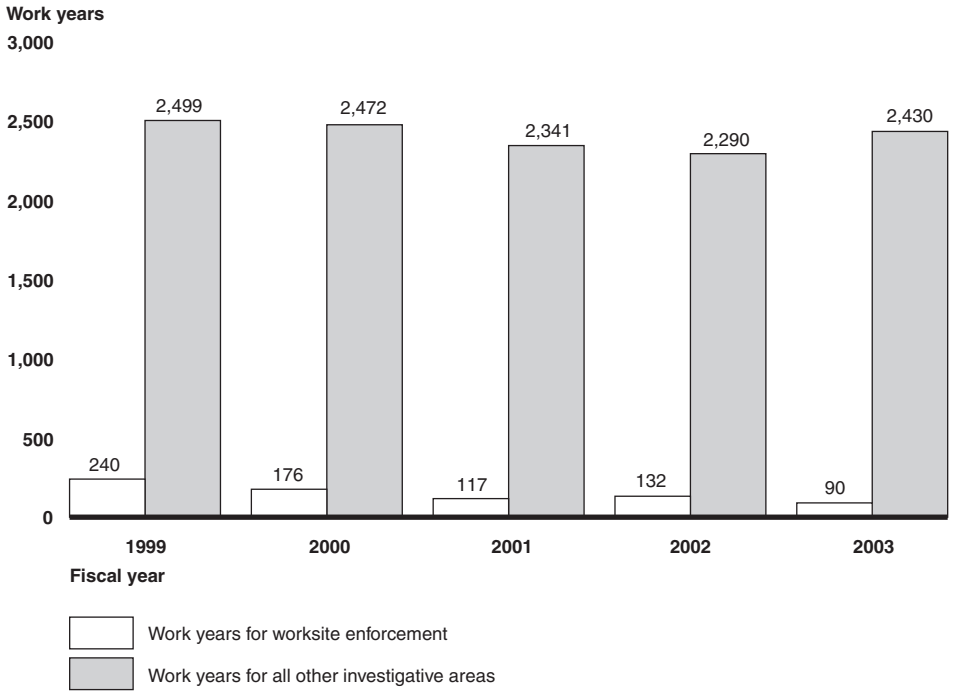
Worksite enforcement was a low priority for INS and continues to be a low priority for ICE. In the 1999 INS Interior Enforcement Strategy, the strategy to block and remove employers' access to undocumented workers was the fifth of five interior enforcement priorities.[17] We have reported that, relative to other enforcement programs in INS, worksite enforcement received a small portion of INS's staffing and enforcement budget and that the number of employer investigations INS conducted each year covered only a fraction of the number of employers who may have employed unauthorized aliens.[18] Furthermore, INS investigative resources were redirected from worksite enforcement activities to criminal alien cases, which consumed more investigative hours by the late 1990s than any other enforcement activity. After September 11, 2001, INS and ICE focused investigative resources on national security-related investigations. According to ICE, the redirection of resources from other enforcement programs to perform national security-related investigations resulted in fewer resources for traditional program areas, like worksite enforcement and fraud.

The resources INS and ICE devoted to worksite enforcement have continued to decline. As shown in figure 2, between fiscal years 1999 and 2003, the most recent fiscal year for which comparable data are available, the percentage of agent workyears spent on worksite enforcement efforts generally decreased from about 9 percent, or 240 full-time equivalents, to about 4 percent, or 90 full-time equivalents.

[17]INS, *Interior Enforcement Strategy* (Washington, D.C.: Jan. 1999).

[18]GAO/GGD-99-33.

Figure 2: Investigative Agent Workyears Spent on Worksite Enforcement Efforts and Agent Workyears Spent on Other Investigative Areas for Each Fiscal Year from 1999 through 2003



Source: GAO analysis of INS case management data.

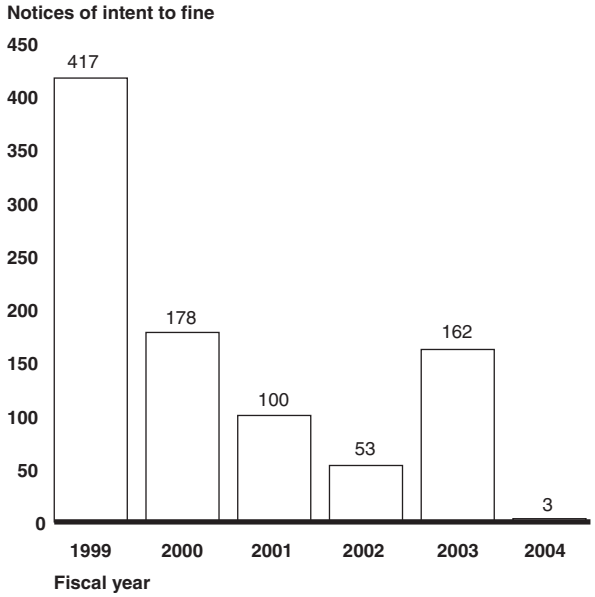
Workyear data for fiscal year 2004 cannot be directly compared with workyear data for previous fiscal years because of changes in the way INS and ICE agents entered and categorized data in their respective case management systems. However, ICE data indicate that the agency

allocated about 65 full-time equivalents to worksite enforcement in fiscal year 2004.[19]

In addition, the number of notices of intent to fine issued to employers as well as the number of unauthorized workers arrested at worksites have also declined. Between fiscal years 1999 and 2004, the number of notices of intent to fine issued to employers for improperly completing Forms I-9 or knowingly hiring unauthorized workers generally decreased from 417 to 3. (See figure 3.)

[19]Fiscal year 2004 and 2005 data cannot be compared with data for previous fiscal years because the way INS agents entered data on investigative workyears into the INS case management system differs from the way ICE agents enter such data into the ICE system. Following the creation of ICE in March 2003, the case management system used to enter and maintain information on immigration investigations changed. With the establishment of ICE, agents began using the legacy U.S. Customs Service's case management system, called the Treasury Enforcement Communications System, for entering and maintaining information on investigations, including worksite enforcement operations. Prior to the creation of ICE, the former INS entered and maintained information on investigative activities in the Performance Analysis System, which captured information on immigration investigations differently than the Treasury Enforcement Communications System.

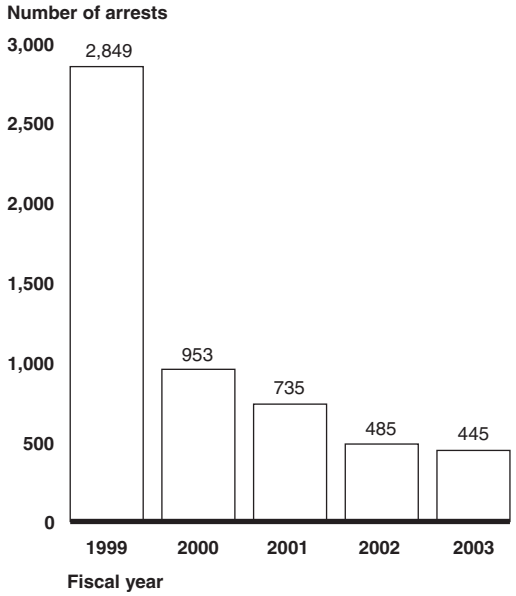
Figure 3: Number of Notices of Intent to Fine Issued to Employers for Each Fiscal Year from 1999 through 2004



Source: GAO analysis of INS and ICE case management data.

The number of worksite arrests declined by about 84 percent from 2,849 in fiscal year 1999 to 445 in fiscal year 2003. (See figure 4.)

Figure 4: Number of Worksite Enforcement Arrests for Each Fiscal Year from 1999 through 2003



Source: GAO analysis of INS case management data.

Difficulties Proving Employer Violations, Collecting Fines, and Detaining Aliens Have Weakened the Worksite Enforcement Program

The difficulties that INS and ICE have experienced in proving that employers knowingly hired unauthorized workers and in setting and collecting fine amounts that meaningfully deter employers from knowingly hiring unauthorized workers have limited the effectiveness of worksite enforcement efforts. In particular, the availability and use of fraudulent documents has not only undermined the employment verification process, but has also made it difficult for ICE agents to prove that employers knowingly hired unauthorized workers. In 1996, the Department of Justice Office of the Inspector General reported that the proliferation of cheap fraudulent documents made it possible for the unscrupulous employer to avoid being held accountable for hiring illegal aliens.[20] In 1999, we reported that the prevalence of document fraud made it difficult for INS to prove that an employer knowingly hired an unauthorized alien.[21] ICE officials

[20]Department of Justice, Office of the Inspector General, *Immigration and Naturalization Service Efforts to Combat Harboring and Employing Illegal Aliens in Sweatshops*, I-96-08 (Washington, D.C.: May 1996).

[21]GAO/GGD-99-33.

told us that employers who they suspect knowingly hire unauthorized workers can claim that they were unaware that their workers presented false documents at the time of hire, making it difficult for agents to prove that the employer violated IRCA.

According to ICE officials, when agents can prove that an employer knowingly hired an unauthorized worker, difficulties in setting and collecting meaningful fine amounts have undermined the effectiveness of worksite enforcement efforts and the deterrent effect of employer fines. Under IRCA, employers who fail to properly complete, retain, or present for inspection a Form I-9 may be administratively fined from $110 to $1,100 for each employee. Employers who knowingly hire or continue to employ unauthorized aliens may be administratively fined from $275 to $11,000 for each employee, depending on whether the violation is a first or subsequent offense. ICE officials told us fine amounts recommended by both INS and ICE agents were often negotiated down in value during discussions between agency attorneys and employers. These officials said that the agency mitigates employer fines because doing so may be a more efficient use of government resources than pursuing employers who contest or ignore fines, which could be more costly to the government than the fine amount sought. Furthermore, the amount of mitigated fines may be, in the opinion of some ICE officials, so low they believe that employers view it as a cost of doing business, and they believe the fines do not provide an effective deterrent for employers who attempt to circumvent IRCA. In addition, the Debt Management Center, which is responsible for collecting fines issued against employers for violations of IRCA, has faced difficulties in collecting the full amount of fines from employers. According to ICE, the agency has faced difficulties in collecting fines from employers for a number of reasons, for example, because employers went out of business or declared bankruptcy. In such instances, the agency determines whether to pursue collection of employer fines based on the level of resources needed to pursue the employer and the likelihood of collecting the fine amount.

Finally, the Office of Detention and Removal[22] has limited detention space, and unauthorized workers detained during worksite enforcement investigations are a low priority for that space. In 2004, the Under

[22]The Office of Detention and Removal is primarily responsible for identifying and removing criminal aliens from the United States. The office is also responsible for managing ICE's space for detaining aliens.

Secretary for Border and Transportation Security sent a memo to the Commissioner of U.S. Customs and Border Protection and the Assistant Secretary for ICE outlining the priorities for the detention of aliens. According to the memo, aliens who are subjects of national security investigations were among those groups of aliens given the highest priority for detention, while those arrested as a result of worksite enforcement investigations were to be given the lowest priority. According to ICE officials, the lack of sufficient detention space has limited the effectiveness of worksite enforcement efforts. For example, they said that if investigative agents arrest unauthorized aliens at worksites, the aliens would likely be released because the Office of Detention and Removal detention centers do not have sufficient space to house the aliens and they may re-enter the workforce, in some cases returning to the worksites from where they were originally arrested.

Worksite Enforcement Focus Shifted to Critical Infrastructure Protection after September 11, 2001

In keeping with the primary mission of DHS to combat terrorism, after September 11, 2001, INS and then ICE has focused its resources for worksite enforcement on identifying and removing unauthorized workers from critical infrastructure sites, such as airports and nuclear power plants, to help reduce vulnerabilities at those sites. According to ICE officials, the agency shifted its worksite enforcement focus to critical infrastructure protection because unauthorized workers employed at critical infrastructure sites indicate security vulnerabilities at those sites. In conducting critical infrastructure operations, the agency has worked with employers to identify and remove unauthorized workers and, as a result, has not focused on sanctioning employers at critical infrastructure sites. In 2003, ICE headquarters issued a memo requiring field offices to request approval from ICE headquarters prior to opening any worksite enforcement investigation not related to the protection of critical infrastructure sites, such as investigations of farms and restaurants. ICE officials told us that the purpose of this memo was to help ensure that field offices focused worksite enforcement efforts on critical infrastructure protection operations. Field office representatives reported that non-critical infrastructure worksite enforcement is one of the few investigative areas for which offices must request approval from ICE headquarters to open an investigation and also reported that worksite enforcement is not a priority unless it is related to critical infrastructure. In addition, some of these representatives, as well as immigration experts we interviewed, noted that the focus on critical infrastructure protection does not address the majority of worksites in industries that have traditionally provided the magnet of jobs attracting illegal aliens to the United States.

Concluding Observations

Efforts to reduce the employment of unauthorized workers in the United States require a strong employment eligibility verification process and a credible worksite enforcement program to ensure that employers meet verification requirements. The current employment verification process has not fundamentally changed since its establishment in 1986, and ongoing weaknesses have undermined its effectiveness. The Basic Pilot Program shows promise for enhancing the employment verification process and reducing document fraud if implemented on a much larger scale. However, the weaknesses identified in the current implementation of the Basic Pilot Program, as well as the costs of an expanded program, are considerations that will need to be addressed in deciding whether this program, or a similar automated employment verification process, should be significantly expanded or made mandatory. Even with a strengthened employment verification process, a credible worksite enforcement program would be needed because no verification system is foolproof and not all employers may want to comply with IRCA.

We are continuing our work and expect to have several recommendations aimed at improving employment verification and worksite enforcement efforts.

This concludes my prepared statement. I would be pleased to answer any questions you and the Subcommittee members may have.

GAO Contact and Staff Acknowledgments

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