



To tackle illegal immigration, go after the employers

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The job magnet is making it impossible to secure the Southwest border. The availability of jobs in the United States attracts immigrants who need work and are willing to do whatever they have to do to cross the border.

Congress tried to eliminate the job magnet by establishing employer sanctions with the Immigration Reform and Control Act of 1986 (IRCA). The theory was that if employers were sanctioned for hiring aliens who do not have work authorization, they would stop hiring them. This was expected to prevent a new group of undocumented aliens from taking the place of the ones IRCA was going to legalize.

It didn't work. Approximately 2.7 million undocumented aliens were legalized, but by the beginning of 1997, they had been replaced entirely by a new group of undocumented aliens. It failed because the sanctions were not applied on a large-scale, nationwide basis. This is necessary to make employers throughout the United States afraid that they will be sanctioned if they hire undocumented workers. And it has continued to fail for the same reason. According to the Pew Research Center, there were 8 million unauthorized immigrants working or looking for work in the United States in FY2014.

The government has had more than 30 years to make the sanctions work, and it hasn't happened. It is unrealistic at this point to expect it ever to happen. A new approach should be considered. But first, let's look at what employer sanctions do.

Employer sanctions make it unlawful for employers to employ aliens knowing that they are not authorized to work in the United States:

1. For a first offense, a fine of not less than \$375 or more than \$3,200 is imposed for each unauthorized immigrant;

2. For a second offense, the fine is not less than \$3,200 or more than \$6,500; and
3. For more than two offenses, the fine is not less than \$4,300 or more than \$16,000.

Engaging in a pattern or practice of knowingly hiring unauthorized immigrants can result in a fine of up to \$3,000 for each unauthorized immigrant and imprisonment for up to six months. The following statistics show how lax enforcement has been:

Table I. Final Orders and Administrative Fines, FY1999-FY2014

Fiscal Year	Number of Final Orders Issued	Administrative Fines Imposed
1999	215	\$1,674,672
2000	312	\$3,337,472
2001	297	\$2,037,509
2002	91	\$485,128
2003	52	\$289,814
2004	10	\$90,249
2005	10	\$455,870
2006	0	\$0
2007	2	\$26,560
2008	18	\$675,209
2009	52	\$1,033,291
2010	237	\$6,956,026
2011	385	\$10,463,988
2012	495	\$12,475,575
2013	637	\$15,808,365
2014	642	\$16,275,821

Source: CRS presentation of data from U.S. Department of Homeland Security, Immigration and Customs Enforcement, May 3, 2012 (FY1999-FY2008) and March 11, 2015 (FY2009-FY2014).

E-Verify.

Some claim that the problem with employer sanctions is that it is difficult to confirm that a prospective alien employee is who he says he is and that he has work authorization. An attempt has been made to solve this problem with an Internet-based system that compares information provided by the prospective employee to government records to confirm identity and employment eligibility. This system is called, “E-Verify.”

E-Verify started as a voluntary program more than 20 years ago, and it still has not been converted into a mandatory program. Among other problems, its reliability depends on the legitimacy of the documents the prospective employees provide.

According to the CATO Institute, making E-Verify mandatory would not stop illegal employment, and it would harm legal workers and their employers. Moreover, employers don’t want to use E-Verify. It is available to them already on a voluntary basis, and in 2017, 94 percent of them chose not to use it in states that do not make its use mandatory.

Trump Administration

Acting ICE Director Tom Homan said at a Heritage Foundation event recently that ICE will increase the amount of time spent on worksite enforcement by four or five times. But four or five

times “very little worksite enforcement,” is likely still to be “very little.” Employers receiving fines in FY2014 represented less than .02 percent of the U.S. employers.

Shift attention to “the other magnet.”

Unscrupulous employers are drawn to undocumented immigrant workers because they can be exploited easily and are not in a position to complain about the way they are treated. I call this “the exploitation magnet.”

The Department of Labor (DOL) sanctions employers for exploiting employees without regard to their immigration status. Consequently, DOL enforcement officers do not have to determine whether an exploited employee is an alien, and if so, whether he has work authorization. For instance, DOL enforces the Fair Labor Standards Act, which requires a minimum wage and overtime pay.

Low wage industries tend to employ substantial numbers of undocumented immigrants. DOL prosecutes employers for violating labor laws much more aggressively than DHS prosecutes employers for hiring unauthorized immigrants.

In FY2014, for instance, DHS issued only 643 final fine orders, imposing fines totaling \$16.28 million, and DOL collected \$79.1 million in back wages for overtime and minimum wage violations involving 109,261 employees.

Table 5. Cases and Back Wage Collections in Nine Low-Wage Industries: FY2014

Industry	Number of Cases	Back Wages Collected	Number of Employees Receiving Back Wages
Restaurants	5,118	\$34,451,990	44,133
Health Care	1,581	\$17,703,092	21,029
Agriculture	1,430	\$4,502,976	12,031
Day Care	1,144	\$1,875,156	5,812
Hotels & Motels	1,049	\$4,040,376	7,420
Janitorial Services	523	\$3,902,434	4,425
Guard Services	475	\$5,659,936	6,729
Temporary Help	368	\$3,915,498	6,009
Garment Manufacturing	239	\$3,095,832	1,673
Total	11,927	\$79,147,290	109,261

Source: Department of Labor, Employment Standards Administration, Wage and Hour Division.

With additional funding, DOL could mount a large-scale, nationwide campaign to stop the exploitation of employees in industries known to hire large numbers of undocumented immigrants, which would go a long way towards eliminating the job magnet.