



How E-Verify works: Immigration labor program draws scrutiny

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Amid the controversies brought on by deportations, caged kids and political posturing, one crucial aspect of our immigration system often goes without sufficient scrutiny: E-Verify

E-Verify is a system intended to authorize an individual's legal right to work in the United States. The online database is supposed to verify the authenticity of the documents provided by an employee to an employer. While the system mostly works as it's supposed to, critics say it often fails in its most fundamental goal: keeping undocumented people from gaining legal employment.

Critics of the system on both sides of the partisan aisle say E-Verify has unavoidable flaws and can cause harm to small businesses, the economy and immigrants.

"I think the disagreement is that the system is incapable of being fixed because it's fundamentally broken," Alex Nowrasteh, a senior immigration policy analyst at the libertarian CATO Institute, said in an interview with Fox News. "If it depends on the documents you give the employer, nothing is going to fix it. No amount of money you throw at it is going to fix that."

Nowrasteh said the fatal flaw in the E-Verify system is that it doesn't rely on any biometric data, like fingerprints or DNA samples, to ensure the employee is who their documents say they are. Creating a biometric database, he said, would be a case of government overreach.

A spokesperson for the United States Citizenship and Immigration Services, the agency that oversees E-Verify, said that there are no current plans to incorporate the biometric data into the system.

Still, politicians have raised the prospect of mandating E-Verify for all employers. Since 2015, Rep. Lamar Smith (R-Texas) has proposed the Legal Workforce Act, which would mandate the system nationally.

"Federal immigration law requires that employers hire authorized workers," Smith said in a statement. "My bill recognizes the special needs of small businesses, which is why it phases in the requirement to verify all new hires based on the size of the workforce."

The bill has passed the House Judiciary Committee. It had 54 co-sponsors, all of whom are Republicans.

The USCIS spokesperson said the agency is continuously exploring plans to implement E-Verify across the nation.

“Major system modernization efforts focus on increasing capacity and making the system as efficient and accurate as possible,” the spokesperson said. “Cross-training of employees will be leveraged to manage additional workloads during peak enrollment times should mandatory E-Verify become reality.”

E-Verify, created under the Illegal Immigration Reform and Immigration Responsibility act of 1996, checks an employee’s I-9 form against the databases of the Department of Homeland Security or the Social Security Administration. If discrepancies arise, the employee is given a tentative nonconfirmation (TNC). The TNC must be challenged within two weeks, and if it’s not, they’re issued a final nonconfirmation (FNC), which forces the employer to fire the employee.

The accuracy of erroneous TNC and FNC notices has increased over time, according to DHS data. Still, the CATO institute found, through an analysis of government data from 2006 to 2016, that about 580,000 legal workers were temporarily barred from employment due to E-Verify errors. Of those, 130,000 legal workers lost their jobs.

Beyond that, Nowrasteh said that a Westat study showed that E-Verify approved 54 percent of known undocumented immigrants whose information was run through the program.

“Before you make it a national mandate and force every employer to run every American through it who has a job, we should know that it works,” he said.

Studies of E-Verify’s accuracy by USCIS found that it works as intended for 99.8 percent of workers. The 0.2 percent of erroneous denials left more than 62,000 without work in 2016, according to a recent CATO Institute article.

Nowrasteh said that E-Verify, much like any prohibition, pushes people to find ways around the system.

“People know you can get around it if you use a fake ID,” he said. “They know it’s not a silver bullet, they know it’s not magic.”

Additionally, Nowrasteh recently wrote that mandating E-Verify would increase instances of identity theft and loans – where someone with legal authorization to work loans their identification documents to an undocumented person so they can obtain legal work.

Instead of cracking down on undocumented people, Nowrasteh said that expanding their ability to obtain legal work would bolster the economy at large and several industries where they disproportionately work, like the agriculture and manufacturing sectors.

The sentiment is echoed by Allen Orr, an attorney on the executive board of the American Immigration Lawyers Association. He said that heightened policing of law-abiding immigrants is akin to previous prohibitions in American history.

Increasingly, ICE raids are pulling the labor force from farms and factories. In Ohio, 146 were arrested in a single raid on a Fresh Mark farm in late June. ICE said it was the largest workplace raid in the agency's history, and the second massive raid in Ohio that month. Earlier that month, 114 were arrested at an Ohio landscaping company.

“Law and order, patrolling and policing people, does not lead to resolution. It leads to familiarity because that's what the United States has always done,” Orr said. “Slaves, alcohol, drugs, it's all the same. Over-policing does not solve the problem.”

A solution that falls short of citizenship, but wouldn't cripple farms and factories across the country, would be a pathway to work authorization. This type of solution falls in line with Nowrasteh's way of thinking.

“Legalizing an illegal market helps everybody. It helps public safety. It helps immigrants who are legalized ... and ultimately it helps the economy when these people are above board,” Nowrasteh said. “... If they're deported, their spending power is also deported.”