E-Verify Creates Loophole for Undocumented Workers, Employers

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E-Verify ensures workers have proper documentation, but undocumented workers have been using stolen identities as a way to pass through the system. It's unclear whether the worker or employer is exploiting the loophole.

Five days after Jesus entered the country illegally he had a job at Quality Sausage Co. in west Dallas, using a stolen identity that he said was provided to him by a staffing agency.

"I came here to work and support my family," said Jesus, who was given a pseudonym because he feared retaliation. "My brother and another family member were already working at Quality Sausage, and they said they could get me in so I decided to come."

Jesus, 24, used the name and Social Security number of Adrian Gonzalez, 28, of Fort Worth, for five years to work at the plant. The *Star-Telegram* found Gonzalez, who said he had no idea that his personal information had been used by Jesus. "I've been fired from jobs and have been accused of crimes I didn't commit because my identity was stolen," Gonzalez said. "I don't know what to do anymore, I think I might need to change my name."

Archer Services LLC, a staffing agency in Irving, hired Jesus and provided him and two of his family members with stolen identities to work at the plant, according to Jesus. Five other undocumented workers who were employed by the staffing agency to work at the plant also said they were provided an identity by Archer to work there. Three supervisors told the *Star-Telegram* that people who worked for them were undocumented. The allegation of the purchase of false identities from Archer has also appeared in sworn court documents.

Ruben Lozano, the owner of Archer Services, denied that his agency provided stolen identities. He said Jesus and his relatives provided legitimate documents belonging to authorized workers that were vetted by Archer Services using a system called E-Verify.

E-Verify matches information provided by employees with records from the U.S. Department of Homeland Security and the Social Security Administration. The system is used by federal employers and is mandated to some degree in 25 states. In Texas, public employers and state

contractors are required to use E-Verify. Archer and Quality Sausage are not required to use the web-based system.

"We did everything we were supposed to do and more but now you're here and I'm in this mess because the system doesn't work," said Lozano from his desk at the agency's main office in Mercedes.

E-Verify has been touted by politicians and immigration officials as a fix for illegal hires but the system fails when applicants, employers or temporary employment agencies use fraudulently obtained identities belonging to real people like Gonzalez. Also, employers whose workers are cleared by E-Verify can avoid immigration law penalties because they can claim they didn't knowingly hire undocumented workers.

"Mandating E-Verify is not a silver bullet that's going to solve everything," said Mark Krikorian, executive director of the Center for Immigration Studies, a Washington, D.C.-based group advocating for limited immigration. "But it is necessary to have a serious immigration enforcement system."

E-Verify has failed to identify nearly 12 million illegal hires since 2006, according to a 2019 report by the CATO institute, a libertarian think-tank in Washington, D.C.

"E-Verify allows politicians to have it both ways: Supporting it makes them look tough on illegal immigration while the fact that it's so easy to evade means their local businesses and economies are largely unaffected," said Alex Nowrasteh, the institute's director of immigration studies.

Mandating E-Verify

At least 30 bills mandating E-Verify have been introduced in Texas in the past decade. Only one has passed, and none addressed undocumented workers, employers or temporary employment agencies using fraudulently obtained identities, according to an analysis by the *Star-Telegram*.

Texas Rep. Leo Pacheco, a second-term Democrat from San Antonio, introduced a bill in February that would mandate all contractors and subcontractors paid with public funds to use E-Verify.

He said E-Verify is not a fix but a deterrent for illegal hires. A real fix, he said, would be reforming the 1986 federal immigration law that makes it nearly impossible to punish employers caught with an illegal workforce. That law made it illegal to knowingly hire unauthorized workers.

Ten years later, Congress mandated pilot electronic employment verification programs, one of which evolved to become E-Verify.

Since 1990, the number of unauthorized immigrants has more than tripled. In 2017, there were 10.5 million unauthorized immigrants living in the U.S. About 7.6 million were part of the U.S. workforce, according to the latest estimates by the Pew Research Center, a nonprofit, nonpartisan think tank in Washington, D.C.

"E-Verify is not perfect, it still has some holes but it's better than nothing," Pacheco said. "This is an anti identity theft bill that will help get everybody to compete on the same playing field when they're bidding for jobs."

Pacheco considers himself an E-Verify expert because he scrutinized hundreds of fraudulent applicants in his 13 years vetting and hiring job applicants for a construction company and a community college in San Antonio.

But it was the experience of his late father-in-law that prompted him to introduce a bill some of his fellow Democrats have called "anti-immigrant."

Andres Martinez was a U.S. Air Force veteran who fought in the Korean and Vietnam wars. Martinez died in 2008 at 77. He spent the last 10 years of his life fighting with the Social Security Administration because a construction worker in Missouri was being paid using his identity.

"Every year he was called by the IRS because they said he made twice as much money as what he was recording," Pacheco said. "He was always so upset by this that he changed his Social Security number because it was the only way to stop getting audited every year."

Pacheco expects opposition from the Mexican American Legislative Caucus, of which he is a member, and lobbyists representing the agriculture and service industry.

"My bill isn't going to stop the hiring of undocumented people but it will slow them down," Pacheco said. "There's been countless times when I've told applicants that we use E-Verify and they simply walk out the door."

E-Verify is the only service of its kind that electronically confirms an employee's information against millions of records available to Homeland Security and the Social Security Administration and provides 96 percent of results within three to five seconds, according to U.S. Citizenship and Immigration Services. It is used in more than 3 million hiring sites.

States began to require some employers to use E-Verify in 2006. Arizona became the first state in 2008 to require that all employers use E-Verify.

The National Immigration Law Center, a nonprofit advocating for the rights of immigrants with low incomes, found Arizona lost 13 percent in income taxes the first year E-Verify was in effect because workers and employers moved off the books into the underground economy.

Alabama, Georgia, Mississippi, North Carolina, South Carolina, Tennessee and Utah also require all or most employers to use E-Verify.

Much like Pacheco, advocates of E-Verify say the system slows the jobs magnet for undocumented immigrants and boosts employment for U.S. citizens.

Studies have provided conflicting views on the success of E-Verify.

Federal Reserve Bank of Dallas researchers in 2017 determined the E-Verify mandate neither reduced nor slowed the population growth of unauthorized immigrants in Alabama, Arizona, Mississippi and Utah.

That same year, though, a study by the Federation for American Immigration Reform, a group advocating for limited immigration, found that the 14 states that passed E-Verify laws since 2009 experienced a drop in unemployment rates even while the national average increased.

"E-Verify ensures that only authorized workers gain employment opportunities in the states where it's being used," the group's president, Dan Stein, said in a news release at the time. "As a result, American jobs are going to authorized workers, many of whom had abandoned their job hunt altogether and had given up hope of ever again finding employment."

The CATO institute said the FAIR report was "deeply flawed," because it excluded Arizona, where unemployment increased in the same time period.

"All illegal workers in the United States know how to fool E-Verify," said Nowrasteh, the institute's director. "Anti-immigration activists sold E-Verify as a silver bullet program but it turns out that it was shooting blanks."

The Jobs Magnet

Jesus crossed the Rio Grande on a foggy November morning in 2015 near Progreso with the help of a smuggler paid by a family member.

Then 19, he left behind his sick parents in his hometown near the Gulf Coast of Veracruz, Mexico.

"They needed medication and we couldn't afford it," Jesus said. "I spent years looking for a stable job but there was nothing for me there so I decided to come."

For three days, Jesus evaded the U.S. Border Patrol by walking alongside a group of five migrants in the dark of night through the desolate ranchlands of South Texas. After circumventing the checkpoint near Falfurrias, they rode in the back of a semi-truck to a Fort Worth truck stop.

That afternoon a relative of Jesus, who had made the same trek a decade earlier, took him to the store to buy new clothes and a pair of work boots. The man, who was also in the country illegally and worked at Quality Sausage, called Archer Services.

The next morning, Jesus said, he paid an Archer Services representative $300 in exchange for a badge bearing the name of Adrian Gonzalez. That same day, he began earning $12 an hour preparing pre-cooked meat and pizza toppings for restaurants and grocery stores across the U.S. Jesus earned more in one day at Quality Sausage than he made in one week in Mexico.

"At times the work was unbearable," Jesus said, recalling the 10- to 12-hour shifts he spent mixing spices next to boiling vats. "We were always being moved around, and there was no training so people were always getting hurt but no one would say anything because they were undocumented."

Roman Nieves, 68, a U.S. citizen who worked as a supervisor at the plant from 1997 to 2017, said he knew the majority of the workers under him were undocumented but he looked the other way because he needed the job. "We were instructed to push for production," Nieves said. "Even if it meant sacrificing quality or the safety of the employees."

In September, the U.S. Department of Labor's Occupational Safety and Health Administration fined Quality Sausage $20,820 for multiple violations, including lack of equipment to protect employees from "severe cuts or lacerations; severe abrasion; punctures; chemical burns; thermal burns; and harmful temperature extremes," according to records obtained by the *Star-Telegram* through the Freedom of Information Act.

The plant was also fined $25,000 by OSHA for penalties related to reporting and recording deaths or injuries at the Dallas plant. Three workers died of COVID-19 in the spring.

This was the first time since 2016 that the department conducted an inspection of the plant. Former supervisor Tommy Nguyen said he filed a complaint in 2018 and claimed he was fired after speaking out about health and safety concerns related to untrained undocumented workers, according to a wrongful termination lawsuit filed in February 2019 in U.S. District Court in Fort Worth.

Nguyen claimed that workers stored meat grinders on the floor, used vinegar to conceal mold on pepperoni and did not properly sanitize mixing vats between uses, according to court documents. Quality Sausage settled Nguyen's case in September 2020.

The company said in a Sept. 25 statement to the *Star-Telegram* it could not comment on the settlement agreement and that it has a "robust safety and health program." In another statement it said it is committed to ensuring that everyone has the legal right to work.

U.S. Immigration and Customs Enforcement declined to comment when asked if it had an open investigation on Quality Sausage or Archer Services.

"Unauthorized workers create vulnerabilities in the marketplace by presenting false documents to gain employment, completing applications for fraudulent benefits, and stealing identities of legal U.S. workers," ICE wrote in an emailed statement.

"In some instances, unauthorized workers may perform duties for which they are not certified or qualified, which could lead to safety concerns. There are real victims associated with identity theft; it can significantly impact an individual's credit history, medical history and other aspects of everyday life."

ICE investigated 6,812 worksite cases and arrested 627 people between October 2018 and September 2019.

Jesus left Quality Sausage in April because he thought ICE would raid the plant after his co-workers died of COVID-19. Since then, he's been mostly doing day jobs and struggling to make ends meet.

"It was a hard job, and the hours were long but at least they paid us well," Jesus said. "I don't know if I'm ever going to find a job that pays that much."

Fixing the System

Lozano, the Archer Services owner, said he had been waiting for ICE to raid his office since April after two undocumented immigrants who worked for him at Quality Sausage died of COVID-19. The *Star-Telegram* reported in May that their families said the two were hired under false names and Social Security numbers.

Four former employees, including Jesus, and two current employees also told the newspaper in May that they paid Archer Services $300 to "rent" another person's name and Social Security number to get a job at the plant. A former production supervisor, Roman Nieves, signed a declaration in support of Nguyen's case in 2020 stating that the majority of the workers he supervised were in the country illegally and given fake or false names to work at Quality

Sausage. Another former supervisor, Jorge Lopez, wrote that he paid Archer $300 for a fake Social Security number so his then-undocumented wife could work at the plant.

Lozano said Archer never charged people $300 but sometimes the agency gave employees personal loans.

"What else was I supposed to do after all of this came to light? I had to prepare myself. I got nothing to hide so I'm still here and I'm not going anywhere," Lozano said during an interview in October at his office.

Archer Services' Irving office provides workers to several food processors in the Dallas-Fort Worth area. From behind his desk, Lozano opened a PDF on his computer and turned his screen around. It showed two scanned IDs.

"You see? All I've got is what they gave me," Lozano said. "I'm no immigration expert, are you? How would you know if these documents are fake?"

His screen displayed a Texas driver's license with a picture of Hugo Dominguez, one of his employees who died of COVID-19 in May. Dominguez, 36, immigrated from Mexico legally and overstayed his visa, according to his family. Dominguez's common-law wife is suing Quality Sausage for wrongful death in a Dallas County district court on behalf of their U.S. citizen children.

The name on the black and white copy of the scanned Social Security card and scanned Texas driver's license with Dominguez's face reads Jose Marcelino Lopez. Dominguez had been using Lopez's name and Social Security number.

Muzaffar Chishti, director of the Migration Policy Institute at New York University School of Law, said it is difficult to prove that an employer intentionally hired an unauthorized worker.

Before leading the institute, Chishti was a lobbyist when President Ronald Reagan signed the 1986 immigration bill. He said he saw how special interest groups representing the construction and agribusiness industries, among others, urged Congress to add into the statute that employers were only responsible for hiring undocumented immigrants if they knowingly did so.

"All an employer has to say is 'I didn't know,'" Chishti said. "Once you've checked the documents, you're scot-free under the law. This is the loophole through which employers have been driving dump trucks through for decades."

Since criminal penalties for employers were first enacted by Congress in 1986, prosecutions nationwide of those hiring unauthorized workers have rarely climbed above 15 annually, according to data analysis by the Transactional Records Access Clearinghouse at Syracuse University.

"We have gotten drunk on the cheap labor which hugely benefits important sectors of our country, of our economy," Chishti said. "That's why employers are hiring unauthorized workers in full violation of the law and that's not a good thing for a country to have, which is supposed to be a country of laws."

U.S. Sen. Rob Portman, R- Ohio, a ranking member of the Senate Committee on Homeland Security and Governmental Affairs, secured commitments to strengthen E-Verify from

Alejandro Mayorkas during Mayorkas' confirmation hearing for secretary of Homeland Security in January. They did not mention the specific changes needed to strengthen the program.

Portman introduced an amendment in 2013 that would have established a system to tap into photo databases and use other biographic information to verify a worker's identity. His amendment was blocked.

His office did not respond to multiple requests for comment.

"It's not just a matter of making sure that more companies step up and voluntarily use it, in my view. It is a matter of changing the program so it is more effective," Portman said during the hearing in January. "Specifically, obviously, the issue of identification. If you have false identification, fraudulently obtained identification then the program is not going to work effectively."

U.S. Citizenship and Immigration Services, which oversees E-Verify, said it is continuously improving its systems and its ability to monitor and stop the use of fraudulent documents. In 2011, E-Verify added a photo tool that prevents the use of counterfeit U.S passports, permanent resident cards and work permits. In 2018, E-Verify connected to the National Law Enforcement Telecommunications System to validate driver's license records in 43 states and jurisdictions. Texas is one of about a dozen states participating.

Adrian Gonzalez, whose identity was used by Jesus to work at Quality Sausage, said he hopes lawmakers do something quickly before he has to resort to changing his name and Social Security number. Two bills in Congress would expand or mandate E-Verify, but neither address identity theft.

President Joe Biden's immigration bill includes a pathway to citizenship for an estimated 11 million undocumented immigrants, funds more technology at the borders and increases assistance to El Salvador, Guatemala and Honduras if they reduce the corruption, violence and poverty that causes people to flee.

But it does not mandate E-Verify. Instead, it calls for a commission of labor, employer and civil rights organizations to help improve the employment verification process. Critics called the bill an "amnesty first, enforcement never" plan. They argue that leaving out an E-Verify mandate is a radical departure from previous immigration reform proposals, making its prospects of becoming a law minimal.

"There could be dozens of people out there with my information," Gonzalez said. "I don't have anything against undocumented people getting jobs but it's not fair that I have to pay the price because lawmakers can't fix the system."