

## E-Verify Talking Points

### What Is E-Verify?

E-Verify is a free, web-based system through which employers may verify the work authorization of new hires through existing federal records.<sup>1</sup> Congress created E-Verify in the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996<sup>2</sup> as a way to help employers comply with the federal ban on hiring unauthorized aliens.<sup>3</sup>

To use E-Verify, the employer takes a new employee’s completed I-9 form and enters the employee’s name, date of birth, and Social Security number (SSN) into the E-Verify system.<sup>4</sup> E-Verify verifies the entered information against Social Security Administration (“SSA”), Department of Homeland Security (“DHS”), and Department of State (“DOS”) records.<sup>5</sup> The employer will quickly receive one of three responses: 1) a confirmation that the employee is authorized to work; 2) a tentative non-confirmation that the information entered differs from official government records; or 3) DHS needs more time to further process the information.<sup>6</sup>

If the employer receives a tentative non-confirmation, the employee can choose to either contest or not contest the case result.<sup>7</sup> If the employee fails to contest the E-Verify result, the non-confirmation is considered final.<sup>8</sup> Every E-Verify employee case must be closed after the final results of verification have been given to the employer.<sup>9</sup> Regardless of the results, upon closing each case, the employer is required to attest to DHS whether the employee has been terminated or remains employed.<sup>10</sup>

E-Verify also prompts employers to compare a photograph displayed in E-Verify with the employee’s Form I-9 photographic document if the employee submitted certain documents such as a U.S. Passport, Passport card, Permanent Resident Card (Form I-551) or an Employment Authorization Document (Form I-766).<sup>11</sup> Employers simply compare the photograph displayed by E-Verify to the photograph on the employee’s actual document or a copy of the employee’s document and determine if the photographs are reasonably identical.<sup>12</sup>

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<sup>1</sup> DEPARTMENT OF HOMELAND SECURITY, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICE, *E-Verify User Manual*, at 4 (September 2012), available at [http://www.uscis.gov/USCIS/Verification/E-Verify/E-Verify\\_Native\\_Documents/manual-employer\\_comp.pdf](http://www.uscis.gov/USCIS/Verification/E-Verify/E-Verify_Native_Documents/manual-employer_comp.pdf).

<sup>2</sup> Pub. L. 104-208, 110 Stat. 3009 (September 30, 1996).

<sup>3</sup> See 8 USC § 1324a (making employment of unauthorized aliens unlawful).

<sup>4</sup> *E-Verify User Manual* at 13, *supra* note 1.

<sup>5</sup> *Id.* at 16.

<sup>6</sup> *Id.* at 21-26.

<sup>7</sup> *Id.* at 27-43.

<sup>8</sup> *Id.* at 28, 36.

<sup>9</sup> *Id.* at 44, 47.

<sup>10</sup> *Id.* at 49, 50.

<sup>11</sup> *Id.* at 16, 17.

<sup>12</sup> *Id.*

Proper use of E-Verify provides the employer with a “rebuttable presumption” against knowingly hiring unauthorized aliens.<sup>13</sup>

### **Why Should My State Require E-Verify?**

Requiring E-Verify use at the state level is good public policy. The benefits include:

- providing a fast, free, and effective way for an employer to verify that all new hires are authorized to work in the United States as required by federal law;
- preventing the harassment of innocent employers as a result of the rebuttable presumption;
- ensuring reliability in employment authorization verification;<sup>14</sup>
- rectifying the current I-9 process that unintentionally encourages document fraud and identity theft because new hires are required to provide specific documents which illegal aliens and individuals who are trying to hide their true identities cannot legally obtain;<sup>15</sup>
- protecting jobs for legal residents and U.S citizens;<sup>16</sup>

<sup>13</sup> IIRIRA § 402(b).

<sup>14</sup> The current mandatory I-9 process merely requires employers review specified documents submitted by the employee and decide whether the documents appear valid on their face. E-Verify, on the other hand, verifies that the documentation submitted by the employee is valid and the name, SSN, date of birth, gender and photographic identification provided on the documentation match in several databases. Almost all employment related identity fraud is SSN only fraud. In fact, according to a Social Security official, “Ninety-eight percent of Social Security-related ID theft cases involve people who use their own names but invent or steal their numbers.” See [http://www.satrib.com/business/ci\\_3778628](http://www.satrib.com/business/ci_3778628). **E-Verify stops 100% of all SSN only, job-related identity theft** because full name, SSN, date of birth, gender and photographic identification must match. If the information input into E-Verify does not match, E-Verify will return a tentative non-confirmation message.

<sup>15</sup> Victims of employment-related document fraud and identity theft suffer real harm. “They have their good names destroyed and can have their credit ruined and medical records compromised with life threatening consequences. They can have income tax liabilities attached to their names for unpaid taxes on revenue earned on their Social Security numbers and they can be denied public benefits such as critically needed Medicaid coverage because wages are being reported on their Social Security numbers. And once children enter the workforce or go to college, they may not be able to qualify for internships, student loans, jobs, unemployment benefits, and mortgages because of the records of other people that are attached to their Social Security numbers.” See Testimony of Ronald Mortensen, Ph.D., before the United State States House of Representatives Judiciary’s Subcommittee on Immigration Policy and Enforcement, *Document Fraud in Employment Authorization: How an E-Verify Requirement Can Help*, at 3, 4 (April 18, 2012), available at <http://judiciary.house.gov/hearings/Hearings%202012/Mortensen%2004182012.pdf>. Under the current I-9 process, children’s SSNs are especially valuable for employment purposes. “Children do not use their Social Security numbers for employment, credit or other purposes, thus the illegal use of their SSN can go unnoticed for many years. E-Verify can help dramatically reduce job-related, child identity theft because an employer using the system in good faith cannot legally enter a child’s date of birth when the employee is obviously an adult.” *Id.* at 2.

<sup>16</sup> Illegal aliens and natives compete for the same jobs, and native workers are increasingly disadvantaged because employers have access to a steady supply of low-wage foreign workers. See Steven A. Camarota, *Immigration’s Impact on U.S. Workers: Testimony Prepared for the House Judiciary Committee, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, Center for Immigration Studies* (November 2009), available at <http://www.cis.org/node/1582>.

- preventing the downward spiral of wages that results from illegal aliens willing to work for sub-standard wages;<sup>17</sup>
- preventing labor union effectiveness from being diminished as a result of the employment of illegal aliens under substandard conditions;
- ensuring that all employers can compete on a level playing field by preventing the use of cheap illegal labor;
- fighting illegal immigration by eliminating the attraction for illegal aliens to come to your state to find jobs; and
- protecting the health, safety and welfare of citizens.<sup>18</sup>

<sup>17</sup> Illegal immigration has a disproportional impact on poor Americans. Because a large proportion of illegal aliens are low-skilled workers, they are more likely to compete with and undercut the wages of low-skill native workers. See Jeffrey S Passel and D'Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States*, PEW RESEARCH CENTER, at 11, 12 (April 2009), available at <http://pewhispanic.org/files/reports/107.pdf>. Harvard University's George Borjas concluded that immigration reduced wages for the poorest 10 percent of Americans by about 7.4 percent between 1980 and 2000 with even larger effects for workers with less than 20 years of experience. See George J. Borjas, *Increasing the Supply of Labor through Immigration: Measuring the Impact on Native Workers, Backgrounder*, Center for Immigration Studies, at 1 (May 2004), available at <http://www.cis.org/articles/2004/back504.pdf>. In Georgia, where the illegal alien share of the labor force went from about 4 percent to 7 percent from 2000 to 2007, a study by the Federal Reserve found that the illegal labor caused a 2.5 percent wage drop overall and a 11 percent drop in construction wages over that time period. See Julie L. Hotchkiss and Myriam Quispe-Agnoli, *The Labor Market Experience and Impact of Undocumented Workers*, FEDERAL RESERVE BANK OF ATLANTA, at 36, 39 (February 2008), available at <http://www.frbatlanta.org/filelegacydocs/wp0807c.pdf>.

<sup>18</sup> Illegal immigration:

- 1) leads to higher crime rates (The Federal Bureau of Prisons reported that, although illegal aliens only make up an estimated 3.7 percent of the United States population, non-citizens account for 26 percent of the federal jail population. See UNITED STATES DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF PRISONS, *State of the Bureau* at 3 (2010), available at <http://www.bop.gov/news/PDFs/sob10.pdf>. DHS estimates that non-citizens nationally comprise 20 percent of inmates in prisons and jails. See CENTER FOR IMMIGRATION STUDIES, *Immigration and Crime: Assessing a Conflicted Issue* at 1 (November 2009), available at <http://www.cis.org/articles/2009/crime.pdf>. Even so, every crime illegal aliens commit in the United States was potentially preventable if the illegal alien had been identified, apprehended, and removed before they victimized anyone.);
- 2) subjects hospitals to fiscal hardship and residents to substandard quality of care (The annual state and local costs related to health care for illegal aliens is \$5.8 billion. See FAIR, *The Fiscal Burden of Illegal Immigration on United States Taxpayers* (2010), available at <http://www.fairus.org/publications/the-fiscal-burden-of-illegal-immigration-on-u-s-taxpayers>.);
- 3) contributes to other burdens on public services, increasing their costs and diminishing their availability (Illegal immigration costs United States taxpayers about \$113 billion a year at the federal, state and local level. See FAIR, *The Fiscal Burden of Illegal Immigration on United States Taxpayers* (2010), available at <http://www.fairus.org/publications/the-fiscal-burden-of-illegal-immigration-on-u-s-taxpayers>. The bulk of the costs — some \$84 billion — are absorbed by state and local governments. *Id.*);

## **Will E-Verify Legislation Withstand a Court Challenge?**

In 2011, the United States Supreme Court upheld state legislation<sup>19</sup> that requires all employers, public and private, to use E-Verify.<sup>20</sup> The Court found that the IIRIRA contains “no language circumscribing state action” and, in fact, the “Federal Government has consistently expanded and encouraged” states to use E-Verify.<sup>21</sup> Important to the Court’s decision to uphold the state law against a preemption challenge was the fact that the law did not conflict with the federal scheme and tracked the language of its federal counterpart closely.<sup>22</sup>

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- 4) diminishes overall quality of life; and
  - 5) endangers the security and safety of the community (“More than half of the 48 Islamic radicals convicted or tied to recent terrorist plots in the United States over the past decade either were themselves illegal aliens or relied on illegals to get fake IDs. Immigration violators participated in the first attack on the World Trade Center, the Los Angeles Millennium bombing plot, and the New York subway bombing conspiracy. Three of the 9/11 hijackers were here illegally; two had previous immigration violations. Three 9/11 hijackers—Mohammed Atta, Hani Hanjour, and Ziad Jarrah—came into contact with state and local police before the attacks for speeding. Atta and Hanjour were visa violators.” Testimony of Michelle Malkin before the Senate Judiciary Subcommittee on Immigration, Border Security, and Citizenship (May 6, 2004), *available at* <http://www.vdare.com/articles/the-other-wall-michelle-malkins-senate-testimony>).

<sup>19</sup> See Ariz. Rev. Stat. Ann. § 23-214(A).

<sup>20</sup> *Chamber of Commerce of the United States v. Whiting*, 131 S. Ct. 1968 (2011).

<sup>21</sup> *Id.* at 1985, 1986.

<sup>22</sup> *Id.*